Supreme Court, U.S.
FILED
992055 JUN 22 2000
OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

STEVEN P. SHEA,

Petitioner,

v.

STATE OF FLORIDA
JUDICIAL QUALIFICATIONS COMMISSION,

Respondent.

On Petition For Writ Of Certiorari To The Florida Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the formation of the JQC, in regulating and monitoring the Florida Supreme Court (FSC) who must approve or reject JQC findings and recommendations, violates procedural and due process, and is unconstitutional on its face and as applied in this case.

2. Whether constitutional rights under the First Amendment were violated by prohibiting Petitioner from speaking in private conversations with other judges of his circuit, whether it was reasonably related to legitimate disciplinary goals, no more restrictive than necessary, and adversely affects all Florida judges.

3. Whether the appellate conduct of the Florida Judicial Qualifications Commission in reviewing judicial decisions rendered by Petitioner was unconstitutional and violative of the independence of the judiciary to render judicial decisions without improper interference.

4. Whether Petitioner's procedural and substantive due process rights as guaranteed by the Fourteenth Amendment were violated by the refusal of the JQC and FSC to follow and enforce JQC rules, and to require the JQC to prove each and every charge by the required evidentiary standards.

5. Whether Petitioner's procedural and substantive due process rights were violated by the conduct of the JQC in publicly pursuing uncharged, false and defamatory matters against Petitioner, and whether such conduct constitutes a gross abuse of power and is violative of the principles of an independent judiciary.

PARTIES TO THE PROCEEDING

The names of all parties to the proceeding are contained in the caption of this case. Petitioner is an individual, not a corporate entity. *See* Supreme Court Rules 14.1(b) and 29.6.

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REFERENCE TABLE FOR ALL ABBREVIATIONS

"R.___" references a pleading or other document as it appears in the Index to Pleading File prepared in the JQC proceeding, a copy of which has been filed with the Florida Supreme Court in a "Notice of Filing Commission's Pleading Index".

"T.___" references the transcript of the hearing.

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"Code Canon" references a Canon of the Florida Code of Judicial Conduct.

"In re" (name of judge or case number) references the names of decisions of the Florida Supreme Court rendered in disciplinary cases brought by the Florida Judicial Qualifications Commission.

"IB" refers to Petitioner's Initial Brief filed in the Florida Supreme Court.

"RB" refers to Petitioner's Reply Brief filed in the Florida Supreme Court.

"JQC" refers to Florida Judicial Qualifications Commission.

"FSC" refers to Florida Supreme Court.

OPINIONS BELOW

The Findings, Conclusions and Recommendations (FC&R) of the Florida Judicial Qualifications Commission (JQC) are unreported. The Final Judgment of the Florida Supreme Court (FSC) is not yet reported in the Southern Reporter.

JURISDICTION

The Judgment of the FSC was rendered on March 23, 2000,[1] (Pet. App. 1), adopting the March 19, 1999 FC&R. (Pet. App. 2.) The FSC's Order Denying Motion for Rehearing was entered May 25, 2000. (Pet. App. 3.) On May 26, 2000, the FSC granted a stay until June 26, 2000. (Pet. App. 4.) This Court has jurisdiction to review the decision of the FSC. 28 USC § 1257. *See Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476-86 (1983); Art. V, § 12, Fla. Const. The Florida Attorney General has been notified of this action pursuant to U.S. Supreme Court Rule 29.4(c). This Petition is timely filed because it was mailed within ninety days of May 25, 2000, the date the Motion for Rehearing was denied in the court below. Supreme Court Rules 13.3 and 29.2.

[1] The Court denied the Motion for Rehearing yet issued on that date a corrected Opinion dated March 23, 2000.

STATUTORY PROVISIONS INVOLVED

Art. V, § 12, Fla. Const. is reprinted in its entirety at Pet. App. 11. JQC Rules 6(g), 23 and 25(a) are reprinted at Pet. App. 12.

STATEMENT OF THE CASE

Petitioner seeks review of the FSC's Final Judgment adopting the JQC recommendation that Petitioner be found guilty of 18 charges in violation of the Florida Code of Judicial Conduct ("the Code"), that Petitioner be removed from the Circuit bench of the Sixteenth Judicial Circuit, and that he pay costs of the proceedings.

The important issues of national import in this case encompass breaches of federal free speech and due process rights adversely affecting Petitioner as well as all Florida judges, infringement on constitutional principles of judicial independence, *"one of the crown jewels of our system of government"*,[2] JQC misconduct in initiating false charges and the resultant denial of the FSC to address this prejudicial conduct, as well as failure of the FSC to require the requisite evidentiary standard of proof.

A straightforward review of the record reveals that Petitioner is a strong-willed yet courageous, principled judge who did not fear rendering fair yet unpopular

[2] Chief Justice William Rehnquist: Address to American University, Washington, D.C., April 9, 1996, in response to criticism of decisions of U.S. District Judge Harold Baer.

decisions, demanding high standards of conduct, and would never seek to abuse his office for personal gain.

Proceedings Below

In November, 1994, Petitioner was elected circuit judge. At all relevant times, Petitioner was the only circuit judge sitting in the Upper Florida Keys at the Plantation Key Courthouse. (FC&R 2).

On March 9, 1998, Petitioner was served with a Notice of Investigation with respect to 55 complaints. (R. 6). He was provided two weeks to respond, and on March 27, 1998, he testified before the JQC, submitting a sworn 400 page response to the charges. No action was taken and the matter was continued until further notice. On that same date, without knowledge of Petitioner's JQC counsel, the deposition of Nicholas Mulick, Esq., was taken by John Reed, Esq., in regards to Mr. Reed's JQC complaint against Petitioner.

On April 17, 1998, again without notice to Petitioner or his attorney, the JQC prosecutor traveled to the Florida Keys to procure the sworn testimony of four Florida Keys' judges, County Judges William Reagan Ptomey, Jr., Wayne Miller, Ruth Becker, and Circuit Judge Sandra Taylor. The sworn accusations of the judges alleging physical threats, gun brandishing and mental instability were proffered to the FSC to obtain a suspension order. All charges were untrue and were eventually abandoned or dismissed.

On May 1, 1998, without being afforded further response, Petitioner was served with a Notice of Formal

Charges containing six vague, non-specific "prefatory charges" and 33 specific, alleged violations of the Code. (R. 1). He was also served with a JQC Order for Psychological Evaluation as well as a JQC Recommendation to the FSC for Immediate Suspension. The four statements of the judges as well as the Mulick deposition were attached to the Motion for Suspension.[3] A written response was filed.

On May 7, 1998, Petitioner was suspended without a hearing. He answered the charges, denied any ethical violation of the Code, and moved to dismiss all 33 charges. (R. 21).

On June 11, 1998, an Amended Notice was filed adding four of the original charges. (R. 39). Three of the charges (34, 35, 37) were dismissed at trial as no evidence was presented. No evidence was offered by the prosecution as to the fourth added charge (36), yet Petitioner was found guilty.

Petitioner moved to have the hearing conducted in the courthouse in the Upper Keys where he and his counsel resided, where he performed his judicial duties, and where the vast majority of witnesses lived. (R. 21, 48). The motion was denied and the hearing was held 88 miles away in Key West.

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[3] Petitioner later complied with two days of ordered psychological testing by a JQC chosen psychologist and two days of voluntary testing by a Florida Bar approved psychiatrist. Mental instability charges were abandoned and no medical, psychological evidence was presented at the final hearing.

On May 19, 1998, Petitioner moved to disqualify the JQC Hearing Panel chairman, Judge Frank N. Kaney, alleging ex parte communications with complainant Judge Miller as well as improper, adverse comments to the news media. (R. 7, 25, 179). Judge Kaney denied the motion. A renewed motion referencing Judge Miller's deposition testimony admitting the communications was also denied.

Petitioner's motions to dismiss and for summary judgment on all 37 charges were denied without hearing. (R. 11, 55a, 131-39, 145-58, 196, 211-24). The motions set out factual and legal grounds regarding the violations of Petitioner's First and Fourteenth Amendment rights and the judicial independence issues, as did all subsequent briefs. Petitioner filed motions for protective order and to preclude improper inquiry, motion in limine, motion to compel compliance with JQC rules and to comply with rules of evidence. All motions were summarily denied. Counsel for Petitioner continued to raise these objections at the hearing and in argument before the FSC, all to no avail.

A hearing on the charges was conducted over a two week period. (T. 5-2982). At the conclusion of the JQC case, the prosecutor announced that she had "presented no evidence" on 12 of the 37 charges (T. 1163), leaving 25 charges for the JQC to consider. One charge (No. 19) was later abandoned by the prosecutor. Judge Kaney refused to entertain Petitioner's prepared motion to dismiss the JQC charges at the close of the prosecution's case. (T. 1166).

On March 19, 1999, the JQC filed a 67-page FINDINGS, CONCLUSIONS AND RECOMMENDATIONS (FC&R) (Pet. App. "2"), finding ethical violations on 18 charges, and announcing dismissal of six charges for insufficient evidence, including the false sexual harassment and gun brandishing charges. The JQC asked for attorney's fees and costs. The matter was referred to the FSC.

On June 11, 1999, Petitioner filed a MOTION TO VACATE (Pet. App. "5"), and his Initial Brief in the FSC.[4] Oral Argument was held in December, 1999, and on March 23, 2000, the FSC OPINION was rendered. (Pet. App. "1").

On April 7, 2000, Petitioner filed a MOTION FOR REHEARING (Pet. App. "6") AND MOTION FOR DISQUALIFICATION OF JUSTICES HARDING AND WELLS (Pet. App. "7"), directing attention to conflicts of interest as well as matters overlooked or misapprehended by the lower court in adopting the JQC recommendation. ORDERS DENYING MOTION FOR DISQUALIFICATION were entered by the Justices on that date. (Pet. App. "8").

On May 25, 2000, the FSC denied the MOTION FOR REHEARING. (Pet. App. "3"). Petitioner immediately filed a MOTION FOR STAY OF MANDATE PENDING CERTIORARI, which the FSC granted on May 26, 2000, until and including June 26, 2000. (Pet. App. "4").

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[4] Petitioner's counsel, Arthur J. England, Jr., a former Chief Justice of the FSC, authored the pleadings and express concern that there appeared to be a *"level of vindictiveness"* on the part of the JQC (Motion to Vacate, p.11); and *"the JQC's approach to its responsibility, as reflected in the entirety of the JQC's case against Petitioner, is truly dangerous to the independence of the judiciary."* (RB, p. 3).

REASONS FOR GRANTING THE PETITIO

A. Summary

This is not an ordinary judicial discipline case. The lower court ignored important federally protected principles of free speech, procedural and substantive due process, as well as constitutional protections of the independence of the judiciary. The decision below was not only wrong, its sanctioning of malicious, bad faith targeting and prosecution by the JQC will undoubtedly cause serious consequences for other judges in the State of Florida, and undermine the public's confidence in the judiciary.[5] The issues in this case raise substantial Federal questions touching on the accommodation of state and federal judicial independence interests under the United States Constitution. *Kosydar v. National Cash Register Co.*, 417 U.S. 62, 65 (1974). *See also Smith v. United States*, 431 U.S. 291, 293 (1977) and *Arizona v. Manypenny*, 451 U.S. 232, 239 (1981). This Court has engaged in "de novo" review of factual findings in Florida cases where, *as here*, there has been an obvious, exceptional show of error, clear injustice, and a *"misapprehension of controlling principles." Florida v. Rodriguez*, 469 U.S. 1, 12 (1984).

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[5] Unfortunately, it appears that this has occurred all too quickly. On June 10, 2000, according to the St. Petersburg Times, Tampa Circuit Judge Edward Ward, after 20 years of judicial service, permanently resigned rather than fight disputed sexual harassment charges publicly brought by the JQC. The Times reports that the alleged victims filed no complaint. If the charges were overstated, this JQC pattern is similar to the dismissed sexual harassment charge No. 7 wrongfully filed against Petitioner. (Pet. App. 9).

The findings of the JQC, adopted verbatim with little explanation by the lower court, were not only vindictive, but misapplied the record and disregarded the "clear and convincing" evidentiary standard required in cases of this kind. *See In re Davey*, 645 So.2d 398, 400 (Fla. 1994). The FC&R lacked objectivity, included numerous uncharged and dismissed matters, and ignored contradictory and conflicting evidence among key prosecution witnesses. Failure to require proof by requisite evidentiary standards, permitting the pursuit of false and defamatory charges, and finding Petitioner guilty of 17 of 18 charges devoid of any discussion of evidentiary support, was "shockingly wrong" and a violation of procedural and substantive due process in contravention of the Due Process Clause of the Fourteenth Amendment, U.S. Constitution.[6]

This Court has intervened when clear evidentiary standards appear to have been misapprehended, ignored or grossly misapplied. *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 491 (1951). In *Mobil Oil Corp. v. FPC*, 417 U.S. 283, 292, 310 (1974), the Court granted review of a claim that the lower court misapprehended and misapplied evidence standards in reviewing administrative findings.

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[6] The FSC found it unnecessary to specify any details as regards 17 charges, despite their constitutional obligation to independently review the record. Failure to fulfill that obligation undermines public confidence in the judiciary, as reflected by the St. Petersburg Times' depiction of the charges as "garbage" and its expression of outrage at the conduct of the JQC prosecution. Martin Dyckman, *The Ruthless Pursuit of a Judge*, 6/29/99; *In Defense of a Free Judiciary*, 8/23/98. (Pet. App. "10"). Supreme Court Rule 14.1(i)(vi).

The lower court's decision *should* be reviewed since it was unduly harsh in its impact. *Montana v. Kennedy*, 366 U.S. 308, 309 (1961). An unjust and unreasonable decision resulting in a gross miscarriage of justice is reviewable. *Washington v. United States*, 357 U.S. 348 (1958). In *Thompson v. City of Louisville*, 362 U.S. 199 (1960), the Court found that the decision was *"so totally devoid of evidentiary support as to render his conviction unconstitutional under the Due Process Clause of the Fourteenth Amendment,"* and that the decision *"turns not on the sufficiency of the evidence, but on whether this conviction rests upon any evidence at all."* This Court has granted certiorari *"because the record does not support that holding." Memphis v. Greene*, 451 U.S. 100, 102 (1981).

This is a case where the evidence demonstrated Petitioner's reputation as a courageous, courteous, yet no-nonsense judge of integrity, diligence, honesty and high standards. The evidence reflected his dedication to his family, his community, his profession and his commitment to helping those suffering from substance abuse and mental illness.[7] With this history of service, it was ignoble that Petitioner was falsely charged with mental instability, sexual harassment, spousal abuse, gun brandishing, – charges prominently published in the media for his

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[7] Petitioner is the parent of six minor children; the past recipient of the FSC's Pro-Bono Award for assisting AID's patients with financial problems; past chair of his church advisory council; a certified addiction professional who served for two years as the director of The Florida Bar's Lawyers Assistance program assisting members suffering from substance abuse and mental health problems; and past work as an HRS attorney assisting abused, neglected and abandoned children.

children to read. An injustice has occurred in this case – to Petitioner, his family, the voters who elected him as well as the general public, the judicial system, all Florida judges – an injustice which the FSC chose not to address, which should not be condoned, and which should be remedied.[8]

B. Due Process Violations; Unconstitutionality of JQC Regulation over Florida Supreme Court

The constitutional structure of the JQC, in regulating and monitoring the Florida Supreme Court, is unconstitutional on its face and as applied in this case, and violates the due process safeguards of the Fourteenth Amendment.[9] Petitioner's procedural and substantive due process rights were violated by the conflict of interest that occurs when the FSC is constitutionally required to approve or disapprove findings and recommendations of the JQC, who, in turn, has authority to investigate members of the Supreme Court, to find probable cause, file formal charges, prosecute the member, determine guilt

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[8] No charge emanated from the public. All charges were levied by the JQC on behalf of a small interconnected courthouse group, and Mr. Reed.

[9] FSC case law overseeing JQC prosecutions disclose that virtually no judge has ever been fully acquitted once the JQC targeted and prosecuted them. The JQC has refused to comply with a Supreme Court directive to provide additional information needed to discharge FSC oversight responsibilities. *In re Fletcher*, 664 So.2d 934 (Fla. 1995); 666 So.2d 137 (Fla. 1996).

and to recommend punishment.[10] Petitioner's due process rights were also violated by the refusal of members of the FSC to disqualify themselves following a Motion for Disqualification setting forth publicized charges of possible misconduct and impropriety, which charges are subject to investigation by the JQC. (Pet. App. "7, 8".)[11]

C. Due Process Violation: Failure to Comply with JQC Rules 6(g), 23, 25(a)

Petitioner's procedural and substantive due process rights were violated by the refusal of the JQC and Florida Supreme Court to follow and enforce JQC rules concerning (1) disqualification; (2) specificity of charges; and (3) confidentiality.

1. Disqualification: The JQC Proceeding Was Tainted by the Participation of the JQC Chair, Judge Frank N. Kaney

JQC Rule 25(a) requires disqualification upon motion and two affidavits. Petitioner filed a Motion to Disqualify the JQC Hearing Panel Chair, Judge Frank Kaney, based on a reasonable belief and concern (among other reasons alleged) that he had engaged in ex parte communications

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[10] The 15 member JQC rotates between an Investigative and a Hearing Panel. Judge Kaney moved to the Investigative Panel following issuance of the FC&R in Petitioner's case.

[11] Article V, § 12, Fla. Const. requires recusal of a chief judge, substituting on the Supreme Court in JQC cases, who is under investigation by the JQC. That same standard should logically apply if a sitting Supreme Court justice is subject to an investigation by the JQC.

with complainant Keys judges. (R. 30, 31). Judge Kaney serves on the Florida Judicial College with two of the most stridently complaining witnesses against Petitioner in this proceeding, Judges Ptomey and Miller.[12] The FC&R signed by chairman Kaney and adopted by the FSC relied heavily on the testimony of these two judges to ground its findings, reach its conclusions, and make its recommendation for Petitioner's removal from office. This motion was denied by Judge Kaney. (R. 11).

Petitioner filed a renewed request for the Chair's disqualification based on newly discovered evidence (Judge Miller's deposition) that substantiated the fact that an ex parte communication relating to specific JQC charges had, *in fact*, taken place. (R. 179). That motion was also denied. (R. 196). The JQC and FSC dismissed the original disqualification motion as resting on unsubstantiated speculation (AB 76-79), but both decisions *ignored* the *renewed motion* – called to the attention of the FSC in Petitioner's initial brief and in the Motion for Rehearing (R. 31; Pet. App. 6). These rulings were error and infected the entire proceeding with a reversible taint.[13]

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[12] Judge Kaney was Dean of the Judicial College and Judge Miller was Assistant Dean. Judge Ptomey serves on the faculty of the Judicial College and acknowledged that he had drafted a JQC complaint against Petitioner before he and Judge Miller initiated the intra-court colloquy which the JQC used as the basis of Charge No. 23.

[13] Judge Kaney maintained his close, private contact with Judge Miller even while the hearing was in progress by dining with him during a lunch break. (Proceedings 12/14/98 at 17).

Even without a disqualification motion, Judge Kaney had an obligation to disclose on the record his communications. *In re Code of Judicial Conduct (Canons 1, 2 and 7A(1)(b))*, 659 So.2d 692, 693 (Fla. 1995) (disclosure required of information which would be relevant to disqualification).

Judge Kaney's participation in the hearing, not to mention his role as presiding Chair, was improper and prejudicial. It was his responsibility to rule on motions and objections. Practically all motions of Petitioner were denied, and almost all objections overruled. He refused to permit introduction of file records which would have significantly impeached the testimony of the JQC star witness, Mr. Mulick. (T. 127, 181, 191, 2058; Pet. App. 6). The entire proceeding under Judge Kaney's control violated Petitioner's due process rights to an impartial tribunal. *See CH2M Hill Southeast, Inc. v. Pinellas County*, 598 So.2d 85 (Fla. 2d DCA 1992). Due to the JQC Chair's inexcusable violation of the Code of Judicial Conduct,[14] resulting in an egregious due process violation, the Court should grant the Petition and the decision against Petitioner should be reversed. *Cf. Pistorino v. Ferguson*, 386 So.2d 65 (Fla. 3rd DCA 1980).

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[14] "A judge ***shall*** disqualify himself" when impartiality might reasonably be questioned, as when the judge has "personal knowledge of disputed evidentiary facts concerning the proceeding." Fla. Code of Judicial Conduct, Canon 3E(1)(a).

2. Due Process Violation: Failure to Comply with JQC Specificity Rule

JQC Rule 6(g) mandates that any JQC charge "specify" and assert the "essential facts" upon which the charge is based. Petitioner was found guilty of unspecified, ambiguous "prefatory" charges filed in contravention of the rule. Judge Kaney prevented testimony to rebut the charges. (T. 2293, 2935). Petitioner's Motions for Protective Order and Motion In Limine to Confine Legal Evidence to Formal Charges were denied. As a result, Petitioner was denied basic due process to defend these vague and ambiguous charges.

3. Due Process Violation: Failure to Comply with Confidentiality Rule; JQC Misconduct – False Charges

In pertinent part, JQC Rule 23(a) provides that *"until formal charges against a judge are filed . . . all proceedings . . . shall be confidential"*. Petitioner's procedural and substantive due process rights were violated by the investigative and prosecutorial misconduct of the JQC in not only publicly pursuing uncharged matters, but also in distorting, fabricating, and instigating false and defamatory charges against Petitioner – all charges eventually dismissed. These charges included mental instability, brandishing guns, threatening to brandish guns (13, 27, 28), sexual harassment (7), picking up prostitutes (37), fishing with drug dealers (29), wife-beating (uncharged), physically threatening judges (unspecified prefatory charge), and criticizing judges in open court (21). Thirteen charges were dismissed or abandoned. (T. 1163). As to gun-brandishing (a charge publicized nationally), the

JQC trial counsel, Lauri Waldman Ross, admitted to fabricating the charge, or, in her words: " . . . *the mistake in the drafting of the (gun brandishing) charges was a mistake that I made*". (T. 871). Ironically, Ms. Ross had simply adopted the charge from the original Notice of Investigation signed by JQC counsel Thomas C. MacDonald, Jr. This misconduct was not addressed by the FSC and should be reviewed by this Court.

Such misconduct, as well as securing a suspension order on flawed charges, constitutes not only a flagrant abuse of power but undermines the independence of the judiciary. Such conduct violates the due process rights of a jurist to defend himself. (The court in *In re The Honorable John H. McBryde*, 117 F.3d 208, 223 (5th Cir. 1997), ruled that the damage to Judge McBryde's reputation was sufficient to confer standing.)

All motions for protective order, to preclude improper discovery, and motions in limine, were denied. This resulted in extensive testimony regarding uncharged matters. (i.e., 6/5/98 deposition of Petitioner, pp. 11-29; 245-256). The confidentiality violations of the JQC were totally inconsistent with the JQC's own arguments regarding the need for confidentiality set forth in *Doe v. State of Florida Judicial Qualifications Commission*, 748 F.Supp. 1520 at 1522-1523 (S.D. Fla. 1990). This violation of procedural and substantive due process prevented a fair hearing.

A serious injustice has occurred when the Petitioner has now been ordered to pay all costs of the prosecution and defense of these uncharged, false and dismissed charges, a sum which may well run into the tens of

thousands of dollars. This Court should grant certiorari to review this injustice.

D. Unconstitutionality of JQC Appellate Conduct; Judicial Orders

The JQC and FSC found that Petitioner violated the Code by the entry of six judicial orders. Each order had a foundation in law and fact, was regular on its face, and was narrowly tailored to the circumstances of the situation the order addressed. The JQC only attacked motives for the orders based on subjective and undocumented beliefs as to why the orders were entered. The FSC failed to explain its blanket approval of the JQC findings. The JQC did not contend that any order was unlawful, and it had no clear and convincing evidence to support its belief as to Petitioner's motivation for the orders.

In no case, however, should the state's judicial disciplinary authority make findings of judicial misconduct through a subjective review of the content of court orders which are legally authorized and appropriate for the circumstances in which they are issued. *In re J.Q.C. No. 77-16*, 357 So.2d 172, 178 (Fla. 1978), the FSC recognized that

> [e]very judicial officer is granted broad discretionary powers, and one of the great strengths of our system is the carefully guarded right to exercise independently those powers.

The proper corrective mechanism for an attorney's disagreement with factual findings or commentary in a judicial order is through a motion for reconsideration, or by means of appellate review. The JQC is an administrative body, not an appellate tribunal. It has no constitutional authority to pass judgment on whether the orders

of judicial officers are textually excessive. Yet in six of their charges sustained against Petitioner, the JQC had done just that, in the guise of ascribing to him unsubstantiated motives of vindictiveness.[15] In each of these six instances, moreover, the order entered by Petitioner was factually justified and legally proper, and the textual content of the order was entirely appropriate. It does not violate the Code for a judge to enter lawful orders. There is a reviewable question as to whether the JQC's conduct, in reversing judicial decisions of Petitioner as if the JQC were an appellate court, was improper, unconstitutional, and infringes on the constitutional doctrine of the independence of the judiciary. No attorney, including prosecutors, are entitled to receive favorable treatment from a judicial officer.[16] Appellate conduct by the JQC in reviewing decisions complained of by the State Attorney violates the constitutional right of trial judges to render judicial decisions without inappropriate interference. *See In re The Honorable John H. McBryde*, supra, where the Fifth Circuit concluded that Judge McBryde's *"interest in deciding those cases free from the specter of interference, except*

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[15] The JQC did not limit their review to six orders. The original Notice and the FC&R referred to orders issued in the following criminal cases: *Farnham; Davis; Hendrickson; Gonzales; Knight; Roublick; Avins* – orders complained of by the State Attorney, the principal JQC complainant.

[16] "It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit." John Adams, Article XXIX of the Declaration of Rights of the Constitution of Mass., 1780. *Pennekamp v. State of Fla.*, 328 U.S. 331, 66 S.Ct. 1029, 1041, 1050 (1946).

by the ordinary process of appellate review" may be constitutionally protected. In *Chandler,* infra, this court declared that *"[t]here can, of course, be no disagreement among us as to the imperative need for total and absolute independence of judges in deciding cases or in any phase of the decisional function."*

E. Independence of the Judiciary

When considering a request to remove a judge from office, there is a delicate responsibility of balancing competing considerations. On the one hand, there is a responsibility to protect and preserve the integrity of the judiciary either by subjecting to "appropriate discipline" a judge who has violated the Code or by removing from office a judge who demonstrates "a present unfitness to hold office." Art. V, § 12(c)(1), Fla. Const.

On the other hand, there is a responsibility to protect and preserve the independence of the judiciary by *retaining* in office a judge who has demonstrated integrity, honesty and a dedication to the maintenance of high standards for the bench and bar.

> The Code is not to be construed to impinge on the essential independence of judges in making judicial decisions . . . It is not intended . . . that every transgression will result in disciplinary action.

Fla. Code Jud. Conduct, Preamble. *In re J.Q.C. No. 77-16,* 357 So.2d 172, 177-78 (Fla. 1978):

> In the interest of protecting and preserving a strong and independent judiciary, we must be careful never to judge a respondent and determine whether to remove him from office on the

> grounds that he possesses an unpopular philosophy, has offensive idiosyncrasies, has rendered unpopular decisions or is too compassionate.

Nothing in the FC&R or FSC Opinion reflects any balance of these competing interests. The decisions *exclude* any mention of Petitioner's competence as a jurist, and leave out any reference to his having learned from his mistakes and expressed remorse. The FC&R adopted by the FSC *includes*, though, facts pertaining to matters which had been improperly raised in the investigatory phase of the proceeding but not charged against Petitioner – matters which are stated to have influenced the JQC's decisions[17] – and facts pertaining to unproved charges. The consideration of these materials violated JQC Rule 6(g) regarding specificity of charges and was a substantive and procedural due process violation.

The unbalanced decisions reflect a lack of even-handedness which has not advanced the interests of the judiciary. Its processes and filings have generated widespread publicity of numerous allegations of sordid misconduct by Petitioner which were either false when uttered or have been proven to be untrue, resulting in public disrepute affecting all of Florida's judges. The independence of the judiciary as well as common human decency is in danger when questionable charges are pursued and distorted solely to disparage and defame a sitting jurist. The JQC's lack of objectivity in the FC&R and the FSC's blanket adoption of the FC&R leaves to this Court a heightened responsibility to ensure that both Petitioner

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[17] *See* FC&R, Pet. App. 2.

and the court system are accorded the constitutional protections and objective evaluation which a public respect for the judiciary requires.

F. First Amendment Violations; Internal conversations with Judicial colleagues

There is a serious question affecting all judges as to whether charging and convicting Petitioner for communicating and disagreeing in private, nonpublic, conversations with other judges of his circuit is an unconstitutional attack on the independence of the judiciary and a violation of Petitioner's constitutional right to free speech under the First Amendment, U.S. Constitution. This prohibition adversely affects all Florida judges. Such a prohibition is not reasonably related to legitimate disciplinary goals and is more restrictive than necessary.[18]

Judges converse. The lower court found that Petitioner violated the Code by comments made in a private

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[18] In dissent, Justices Douglas and Black stated that *" . . . judges are entitled, like other people, to the full freedom of the First Amendment." Chandler v. Judicial Council of Tenth Circuit of U.S.*, 398 U.S. 74, 90 S.Ct. 1648, 1682 (U.S. Okla. 1970). *"Nor may speech be curtailed because it invites dispute, creates dissatisfaction with conditions the way they are, or even stirs people to anger." Young v. American Mini Theaters, Inc.*, 427 U.S. 50, 63 (1975). A principal *"function of free speech under of system of government is to invite dispute." Texas v. Johnson*, 491 U.S. 397, 109 S.Ct. 2533, 2541 (1989). *"Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs." Mills v. Alabama*, 384 U.S. 214, 218, 86 S.Ct. 1434, 1437, 16 L.Ed.2d 484 (1966). *Doe v. Florida JQC*, supra.

conversation with one judicial colleague, and in one conference among seven of the judges in the circuit. Discussions held between judges in private cannot constitute Code violations, irrespective of the subject matter, the nature of the comments, the personal convictions which prompted the comments, the decibel level of the comments, or the colorfulness of the rhetoric.

The FSC found misconduct based on the subjective feelings of one judge to statements made by another judge in these confidential conversations in court facilities. Without any concern for the corrosive effect on judicial collegiality, the JQC and FSC offers not one word in response to the obvious peril created by its encouragement of such judicial treachery. No judge in Florida can possibly feel safe if this group of charges is not reviewed and reversed. There could be no greater violation of a judge's First Amendment right to free speech.[19]

G. Due Process Violation; Failure to Meet Evidentiary Standard of "Clear and Convincing" Evidence; (All Charges)

Petitioner's procedural and substantive due process rights were violated by the failure of the JQC and FSC to require the prosecution to prove each and every charge

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[19] The circumstances surrounding these charges are suspect in any event. Judge Ptomey complained of the private discussions, and as regards the 12/5/97 court conference, Judge Ptomey initiated the post-conference criticisms of Petitioner, had the loudest voice, and had been hard at work preparing a JQC complaint against Petitioner. The FSC failed to address this issue.

by "clear and convincing" evidence. (Pet. App. 6; *Universal Camera, Mobil, Thompson, In re Davey*, supra).[20] The FC&R and FSC Opinions were not based on clear and convincing evidence, and in many instances on any evidence at all.

1. Judicial Orders

With regard to judicial orders Petitioner rendered in judicial proceedings (Nos. 2, 3, 15, 16, 20, 31), all orders were legal and were within Petitioner's judicial discretion. In addition, no harm occurred even if any judicial orders were in error. Petitioner promptly vacated one order that he entered by mistake (No. 3) and another when the complaining witness disavowed the underlying charges (No. 20). Another judge ruled favorably for the person asked to show cause concerning possible contempt (No. 2), and for the attorney defending the effectiveness of his representation in a death penalty case after Petitioner expressed concern as to effective assistance of counsel (Nos. 15, 16.) No party suffered any harm in Petitioner's Order regarding court reporter services in a

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[20] The FSC ruled that testimony that is *indecisive, confused* and *contradicted* by others was a *"far cry from the level of proof required to establish a fact by clear and convincing evidence."* Three criteria are required to prove judicial misconduct by *clear and convincing evidence*: (1) The evidence must be found to be credible. (2) The memories of the witnesses must be clear, precise and explicit, without confusion as to the facts in issue, and must be distinctly remembered. (3) The sum total of the evidence must be of sufficient weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established. *Davey*.

capital case (No. 31). Beyond the absence of any harm from Petitioner's orders, the record does not support impropriety as to any of his legal rulings, and the evidence is neither clear nor convincing that any Code Canon was violated.

2. Internal Communications

With regard to internal communications with court colleagues (Nos. 8, 23), all of the evidence of personal pique by judicial colleagues is immaterial to any charge of judicial misconduct. Petitioner simply shared thoughts about the judicial system in a private conversation with Judge Ptomey, and he simply responded to criticism from colleagues after the business portion of court conference. He clearly had the right to do both without fear of disciplinary reprisal. No clear or convincing evidence surrounding these conversations points to any violation of the Code of Judicial Conduct.

3. Administrative Actions

With regard to actions directed toward court support personnel (Nos. 6, 9, 12, 18, 22, 36), Petitioner in each instance addressed in appropriate fashion a serious problem in the administration of his judicial duties as the senior judicial official in the Upper Keys: requiring non-lawyers preparing petitions for injunctions to comply with disclosure rules pursuant to FSC mandate; developing and sending to the proper authority facts regarding misconduct of deputy sheriff Barney toward a female prisoner; privately admonishing bailiff supervisor Wilkinson to perform her job with common sense; cautioning

the clerk that attorneys were threatening actions for fees if errors continued; seeking authorized advice from an appropriate committee of the Bar concerning the proposed termination of civil court reporting in the Circuit.

In every instance, the charges are grounded on the *subjective perception* of Petitioner's motivations by court support personnel who were under-performing, misbehaving, abusing the public, or simply resistant to change. The Code provides that judges "should participate in establishing, maintaining, and enforcing high standards of conduct." Judges have responsibility for the performance of lawyers and court personnel within their ambit and control. Code Canon 3C(2). By finding Petitioner guilty of an ethical breach in taking steps to improve the performance and professionalism of court support personnel in the Upper Keys, the Code has been perverted. No clear or convincing evidence surrounding these actions points to any violation of the Code of Judicial Conduct.

4. Prohibiting Ex Parte Contacts

With regard to his efforts to curtail *ex parte* contacts with the court (Nos. 17, 32, 33), the propriety of Petitioner's actions cannot be questioned. Canon 3B(7) states that no judge should consider *ex parte* communications involving a pending proceeding. The FSC has reprimanded judges for violating this prohibition, in recognition that the Canon "was written with the clear intent of excluding all *ex parte* communications, except when they are expressly authorized by statutes or rules." *In re Clayton*, 504 So.2d 394, 395 (Fla. 1987). For its part, the JQC has recommended removal from office for a single

instance of improper *ex parte* contact. *In re Boyd*, 308 So.2d 13 (Fla. 1975); *In re Dekle*, 308 So.2d 5 (Fla. 1975). Yet here, implausibly, the JQC and FSC have recommended and ordered Petitioner's removal from office for enforcing a policy which ***prohibits ex parte*** communications. There is no clear and convincing evidence that Petitioner was motivated other than by the Code's directives for the standard of practice in adversarial court proceedings. This Court should review and reverse that decision.

5. Coral Key Disclosure

The FSC found this charge, standing alone, warranted Petitioner's removal from the bench. The JQC's finding of impropriety (adopted verbatim by the FSC), distorted the record and rests on the thin reed of its subjective view of Petitioner's motives – a theme that appears to have dominated the JQC's view of every allegation brought against Petitioner. This Court should review these findings due to the clear injustice and misapplication of evidentiary principles. *Rodriguez, Universal Camera, Mobil,* supra.

It is not of little import that the Coral Key charge was filed against Petitioner by an attorney who did not know and never practiced before Petitioner, and who was obviously seeking an improper advantage in a legal proceeding.[21]

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[21] The Coral Key charge relied on for removal was filed by John Reed, Esq., retained by Petitioner's landlord to defend the complaint contesting an illegal eviction of mobile homes. Mr. Reed filed the JQC complaint shortly after being retained and after contacting his long time friend, JQC prosecutor, Thomas C.

There was no clear and convincing evidence that Petitioner intended or caused these attorneys to terminate their representation of the new owners of the mobile home park. A candid review of the conversations and the record demonstrates that it does not violate the Code for a judge, in a small, closely knit community, to make a private, required disclosure to long-term friends concerning the conflict of interest which arises from their apparent uninformed representation of a client who has instituted proceedings against the only Circuit Judge in the community before whom they practice.[22]

A careful look at Petitioner's conversations with Messrs. Mulick and Beckmeyer reveals that the JQC and FSC's finding of an abuse of judicial office is a view of the evidence not established clearly and convincingly – that is, the finding is based on testimony which is not clear and convincing but rather "indecisive, confused, and contradictory." *In re Davey,* supra at 405. There is a serious and direct testimonial dispute between what Petitioner said to Messrs. Mulick and Beckmeyer and what they claim to have heard. Their testimony was rife with inconsistencies.[23] The findings ignore the 15 year friendship

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MacDonald, Jr., who drafted the original 55 charges. (*See* Reed deposition of record.)

[22] Mssrs. Beckmeyer and Mulick were not uninformed – they had known of the adversity for over nine months and deliberately kept secret the conflict not only from Petitioner but also from their own clientele. In judging credibility, the JQC and the FSC chose to ignore this professional lapse.

[23] Attorneys denying involvement with eviction: T. 84, 86, 87, 90, 113, 122-125, 127, 134, 170; Firm records showing eviction work; Admitting involvement with eviction: T. 106, 108, 113, 122-125, 134, 170; Failing to recall: T. 106, 127, 134; Admitting

between the attorneys and the Petitioner, and Mulick's inconsistent testimony regarding the friendship.

The JQC and FSC's perception of these contacts, as seeking a financial gain, was completely unwarranted by the evidence. In addition to ignoring the inconsistent testimony, the JQC and FSC chose to ignore the numerous witnesses who overheard the conversations and/or were privy to the matters contained within the conversations. (*See* Pet. App. 6).

There is an absence of evidence that Petitioner intended his conversations as a way to have his mobile homes purchased, or that he was motivated to punish his friends for representing the park owners. These were conversations with long-time friends and not with perceived enemies as the JQC and FSC have concluded. The FSC decision ignored the fact that Petitioner never intended to sell one of the mobile homes, and planned to live in it when the children entered college as set forth in his correspondence to his landlord. (T. 2902). The FSC has required more objective support for charges of this nature than this record provides. *In re Davey,* supra at 407.

The JQC and FSC chose to ignore Petitioner's admission that, in 20/20 hindsight, his telephone calls to his attorney friends may not have been the most prudent means to disclose the conflict between his personal interests and his judicial responsibilities. (T. 2906).

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conflict: T. 113, 170; Denying conflict; Reed Deposition p. 6, 10: *"Mr. Mulick told me the prospect of Judge Shea recusing himself from Mr. Mulick's cases was not viewed by Mr. Mulick as a problem;"* Conflicting testimony between attorneys as to whether threats were made. (T. 113). *See* Pet. App. 6.

H. The recommended penalty of removal from office was not warranted

The FSC has ordered that Petitioner be removed from the bench. That draconian level of punishment is unjust, unreasonable, and unduly harsh, and should be reviewed and reversed by this Court. *Montana, Washington,* supra. The decision is not warranted for several reasons.

First, the entire proceeding was flawed due to the constitutional violations, the JQC misconduct, and the participation of Judge Kaney.

Second, removal was not justified by the evidence. No bench misconduct was charged and the findings as to non-bench misconduct were not supported by clear and convincing evidence.

Third, removal was not warranted in light of the factors which the FSC has said should determine the degree of punishment for judicial misconduct, such as the seasoning and experience of the judge, his acknowledgement of mistakes, his remorse, consideration of whether the alleged misconduct is in the discharge of judicial responsibilities in the public setting (which is not the case here) or in private, and the motivation for the criticized behavior.

Fourth, the FSC removal order is out of kilter with precedent. It is relevant to point out that the Sixteenth Judicial Circuit has a relatively small population, and that the people in that community *elected* Petitioner to the bench. He represents the choice of that electorate.

> Any arm of government should be reticent in exercising the power to nullify the elective process by discipline or removal of elected officials.

In re Kelly, 238 So.2d 565 (Fla. 1970).

I. The FSC misapplied precedent

The JQC and FSC reliance on case law to justify removing Petitioner from office was misplaced. The lower rulings relied on *In re Graham* and *In re Crowell* as "less egregious cases." (FC&R 62). They are not. In *In re Graham*, 620 So.2d 1273 (Fla. 1993), the Court used as examples of misconduct Judge Graham's bench conduct. None of the charges against Petitioner involve bench conduct, and Petitioner testified that at times he exercised less than perfect judgment.

In *In re Crowell*, 379 So.2d 107 (Fla. 1979), egregious misconduct in a public setting included having a "propensity to summarily adjudicate and incarcerate a citizen . . . without according to the accused a right to be heard or any opportunity to defend himself." No such direct, flagrant abuse of judicial power was attributable to Petitioner.

Petitioner's alleged misconduct, taken in the *worst possible light*, falls in line with cases where judges have only received public reprimands.

J. Costs

In its decision, the FSC ordered Petitioner to pay "*the costs of these proceedings, limited to the court reporter per*

diem fees, deposition costs and costs associated with the preparation of the transcript and record." (Pet. App. 1, p. 15). For the reasons set forth in Petitioner's MOTION TO VACATE attached as Pet. App. 5, the FSC directive should be reviewed by this Court as exceedingly unjust in light of the nature of the JQC's conduct, the reliance on uncharged matters, the character of the dismissed charges, and any decision this Court may make in reversing the lower court's Opinion.

CONCLUSION

Judges throughout the State of Florida as well as the public and Petitioner would suffer irreparable injury if the serious constitutional violations and injustices in this case are not reviewed and remedied by this Court.

Petitioner should be entitled to a fair, unbiased day before a tribunal not subject to the supervisory jurisdiction of the Respondent JQC. There is an overriding public interest in the proper resolution of the legal issues preserved in this case particularly when a judge elected by the public may have been wrongfully removed from the position entrusted to him by the people. These significant federal issues serve as a sufficient substantial basis for this Court to grant the PETITION, and to reverse the Opinion of the Florida Supreme Court.

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APPENDIX 1

Supreme Court of Florida

No. SC92913

INQUIRY CONCERNING A JUDGE, NO. 97-376 RE: STEVEN P. SHEA

[March 23, 2000]

CORRECTED OPINION

PER CURIAM.

We have for review the findings and recommendations of a hearing panel of the Florida Judicial Qualifications Commission, recommending that Judge Steven P. Shea be removed from his position of circuit court judge for the Sixteenth Judicial Circuit. We have jurisdiction. Art. V, § 12, Fla. Const. For the reasons expressed below, we affirm the hearing panel's findings and recommendation.

Judge Shea took office as a circuit court judge in January 1995. On April 30, 1998, the Judicial Qualification Commission (JQC) filed a "Notice of Formal Charges" in this Court, alleging various violations of the Code of Judicial Conduct. The charges were amended to include six general prefatory charges and thirty-seven specific charges. The prefatory charges alleged that Judge Shea abused the power of his judicial office by engaging in a pattern of vindictive and retaliatory conduct towards those who disagreed with him. This conduct included: publicly holding the disagreeing party up to scorn and ridicule; launching unilateral investigations of the party's

conduct and character; issuing self-serving orders that distorted the facts; airing petty grievances publicly in order to embarrass the parties; being verbally and physically abusive to others; and showing disrespect for fellow judges in his circuit and encouraging others to do the same.

At the end of its case-in-chief, the JQC voluntarily dismissed twelve of the specific charges, stating that no evidence was presented on these charges. Subsequently, the hearing panel found that six other charges were not supported by clear and convincing evidence. The hearing panel did find Judge Shea guilty of the conduct charged in the prefatory charges, except that it did not find that Judge Shea was physically abusive towards others. The charges found by the hearing panel to be supported by clear and convincing evidence are summarized as follows: (1) Judge Shea improperly contacted two attorneys and intimidated these attorneys into withdrawing from representation of their client by threatening to recuse himself from all of their cases; (2) Judge Shea entered an order directing a litigant to show cause why she should not be held in indirect criminal contempt for writing a letter to the Governor complaining of Judge Shea's handling of her support case; (3) Judge Shea improperly sought to hold a counselor of Upper Keys Guidance Clinic in contempt and threatened to put the Clinic out of business; (4) Judge Shea limited the rights of pro se petitioners with domestic violence complaints by requiring employees of the Domestic Abuse Shelter to submit affidavits that stated that they did not furnish any assistance to the petitioners, chilling the willingness of victims and staff to come forward with legitimate claims. Judge

Shea falsely stated in a letter to a newspaper that the staff of the shelter agreed to the use of these forms; (5) Judge Shea engaged in a pattern of antagonism with court staff and other judges; (6) Judge Shea independently investigated a bailiff by interviewing a witness concerning the bailiff without notice to the bailiff and without counsel on his behalf, intending to release the information to a newspaper; (7) Judge Shea slammed a door in a bailiff's face; (8) Judge Shea inappropriately criticized a bailiff; (9) in a capital case, Judge Shea entered an order improperly implying that two attorneys were guilty of unethical conduct without allowing an opportunity to respond and threatening that he would refer any failure of counsel to comply with his directives to the Chief Justice of this Court; (10) Judge Shea denied a proper motion for recusal and then entered an order improperly and inaccurately criticizing defense counsel without affording them an opportunity to respond; (11) Judge Shea improperly suggested that attorneys in a domestic violence case were encouraging their client to disobey his orders by filing motions for a stay and improperly found the client to be in contempt; (12) Judge Shea falsely accused an assistant state attorney of attempting to make ex parte contacts with him and threatened to report him to The Florida Bar; (13) Judge Shea falsely accused an assistant state attorney of having stated that Judge Shea had engaged in ex parte communications; (14) Judge Shea improperly sought to involve third parties in an internal dispute concerning court administrative matters by publicly disseminating his version of events; (15) Judge Shea verbally attacked fellow judges in a regular meeting of the judges; (16) Judge Shea violated the confidence of another judge by

disclosing the contents of a confidential memorandum; and (17) Judge Shea threatened to assess attorney fees against the Clerk of the Circuit Court.

The hearing panel concluded that Judge Shea had violated canons 1, 2, 3, and 5 of the Code of Judicial Conduct and set forth extensive factual findings in support of its conclusion that Judge Shea is unfit to hold office. While these findings fully explain the nature of each particular incident involving Judge Shea's misconduct, we find that charge one of the specific charges to be such a substantial offense that it alone is sufficient to warrant Judge Shea's removal from the bench.

The hearing panel's findings as to charge one are as follows:

> With regard to Charge 1, the Panel finds that clear and convincing evidence demonstrates guilt based upon the following events:
>
> The *Keynoter* is an "Upper Keys" newspaper of general circulation. On Saturday, October 18, 1997, an article appeared in the *Keynoter* discussing Coral Key Village (a well-situated tract on which trailers are located pursuant to oral individual annual leases) and the fact that Nicholas W. Mulick, ("Mulick") an Islamorada, Florida, ("Upper Keys") lawyer, was representing the new owners of Coral Key Village. (T. 2462).
>
> As of that date, Judge Shea, who had been on the bench for approximately ten months, owned two trailers located on Coral Key Village lots. According to Judge Shea, he read the article and noted that "Mr. Mulick was quoted as representing my landlords, who were evicting me . . . and it really surprised me . . . . " (T. 2446).

Judge Shea added that he "was surprised to see that . . . two attorneys who were very good friends of mine who appeared in my court all the time were involved in this eviction." (T. 2446).

Immediately after reading the article, Judge Shea called Mulick at his home at 9:00 or 10:00 a.m. on a Saturday. (T. 85; 2462). According to Mulick, Judge Shea told him that he had attempted to reach Mr. Peterson, a Tallahassee lawyer also representing the new owners, by telephone, but finding him out of town, left a message for him and then called Mulick because his name was in the article. (T. 86). According to Mulick, Judge Shea asked him if he knew that he (the Judge) owned two mobile homes "because he thought that if I knew that, I wouldn't be involved in the case." (T. 86; 2463). Mulick informed Judge Shea that he was not involved in any eviction proceedings, that they were being handled by Mr. Peterson, and that he had only been consulted in connection with land-use matters. (T. 86; 2464).

According to Judge Shea, he "explained to Mulick that they can't even evict us unless they get the land-use changed under Chapter 723" and that "if you're working on the land-use . . . that's an essential, integral part of the eviction." (T. 2464-65). Judge Shea continued, saying "It all goes hand in hand basically" and that he thought "we'd be – to me, we'd be at odds." (T. 2465).

According to Mulick, Judge Shea then indicated that "he thought that because I was representing Coral Key Village that I was adverse to his interests and that if we did not recuse or

withdraw from representing the client, he would have to recuse himself on all cases where we appeared attorney of record." (T. 87). Mulick told Judge Shea that "we shouldn't be talking about this, that he should talk to Mr. Peterson because he was involved in the eviction matter and not I." (T. 87).

According to Mulick, Judge Shea then stated that if the owners of Coral Key Village were to buy him out, that would render the issue moot, and he would not have to withdraw. (T. 89).

Mulick testified that Judge Shea suggested that the buy-out price on the smaller lot was $50,000.00, with the buy-out price on the more desirable lot being $100,000.00. (T. 89). Judge Shea admits to telling Mulick that "my places are worth up to $150,000.00," but denied saying "give me $150,000.00 and I'm out of here," stating, instead, that he suggested that Mulick's client "buy everybody out . . . and then he can own all the trailers there, and he can leave them there, or he can do what he wants." (T. 2477; 2479).

A short time later, Judge Shea called Karl Beckmeyer, ("Beckmeyer") Mulick's law partner. (T. 154). Judge Shea asked him if he represented Coral Key Village, to which Beckmeyer responded that he thought Mulick was doing some land-use work for the new owners. (T. 154). Judge Shea then reminded Beckmeyer that he (Judge Shea) owned trailers in Coral Key Village, followed by the statement that "you're adverse to my economic interest." (T. 155).

Beckmeyer further testified that Judge Shea spoke in a threatening manner and told him that

if his law firm continued to represent the client, he was going to recuse himself from all of their cases, forcing them to go to Marathon and Key West for all of their hearings and trials. (T. 155). According to Beckmeyer, he was "dumbstruck." (T. 155).

When asked whether upon reading the October 18, 1997, *Keynoter* article it was clear to him that Beckmeyer and Mulick were representing the owners of Coral Key Village, Judge Shea said that it was, and that such representation created a definite conflict between him and Beckmeyer and Mulick. (T. 2902-03). Judge Shea said he called, however, because he felt that "Nick and Karl must not understand that there's a conflict here" . . . "because [he] was under the impression they were very happy practicing in the Upper Keys; they weren't dissatisfied with [him]." (T. 2903). He then decided to "disclose this conflict to them because it is a conflict, it's a problem." (T. 2903).

It was then suggested that Judge Shea's call was to "straighten out a conflict," and did he not see an impropriety in doing so, to which he responded that he did not remember using the words "straighten out a conflict." (T. 2904). However, the record reflects that during the Rule 6(b) hearing on the charges, Judge Shea had testified that he had called Beckmeyer's office "and I said, 'Karl,' I said, 'We need to straighten this out, because there's going to be a conflict of interest for me to hear your cases if you're suing me or if I'm suing you and you're representing the other side.' " (T. 2822).

In closing, Judge Shea was asked whether his calls to Mulick and Beckmeyer "might be

viewed as a veiled threat or a show of muscle by a member of the judiciary, [and] would it not have been the better practice to wait until the first case came . . . before [him] – and at that time say, "I'm going to recuse myself" in open court and let them decide what to do there, rather than a private phone call?" (T. 2906). In response, Judge Shea stated that is what he should have done, rather than what he did. (T. 2906).

Following the contact by Judge Shea, Beckmeyer and Mulick felt that they had no choice but to terminate their representation of Coral Key Village. (T. 95).

While the Panel makes no finding as to whether the actual amounts sought by Judge Shea were "exorbitant," it is noted that Judge Shea called his judicial assistant, Lee El Koury, as a witness on his behalf and she testified she overheard a conversation between Judge Shea and Nick Mulick during which Judge Shea "said a sum of money." (T. 1432; 1434). According to Ms. El Koury, Judge Shea "said $150,000.00." (T. 1435). Following the telephone conversation, Judge Shea then told Ms. El Koury that he thought that the waterfront trailer was worth "about $75,000.00," or $25,000.00 less than what he had represented to Mulick. (T. 1436).

It is of further interest to the Panel in evaluating witness credibility that Judge Shea acquired his former wife's interest in the waterfront lot in December of 1995, approximately two years before conveying to Mulick the $100,000.00 price. (T. 2901). When asked how much he had paid his former wife for her interest, he stated that "We had a mortgage on it of

$40,000.00 . . . and I paid off that mortgage, and that's what I paid for that." (T. 2901). He then conceded that as one-half of the mortgage was, theoretically, his responsibility, he effectively paid her $20,000.00 for her interest. (T. 2901). He did state that they had an "informal agreement" that if he ever sold the place, she would get "whatever equity she would be entitled to." (T. 2901). However, when his attention was called to earlier testimony where he stated that he wanted to retire on the property (rather than sell it) he said "I'd like to live there eventually, right." (T. 2902).

All of this testimony raises serious questions surrounding the actual fair market value of the property, the believability of Judge Shea's statements in this regard and his underlying thought processes and intentions. The testimony shows a representation of a fair buy-out value on the more expensive lot of $100,000.00 to Mulick, but a contemporaneous statement to Ms. El Koury that it was worth "about $75,000.00." The testimony also reveals the Judge's purchase of his ex-wife's interest two years earlier by simply satisfying a mortgage of which only $20,000.00 was attributable to her, coupled with a questionable statement that when he eventually sold it, she would receive her share of the equity. However, the Judge seemed to contradict that testimony by stating that he intended to retire on it rather than sell it. (T. 2902).

The Panel also heard evidence from Mr. Rosendale who was Judge Shea's appraisal expert. Mr. Rosendale testified to a value of $141,000.00 and to Judge Shea's involvement in

the real estate appraisal he presented at the trial. (T. 1323 and Ex. 12).

Mr. Rosendale prepared an appraisal of the mobile homes and arrived at a value of $141,000.00. (T. 1323). Judge Shea did not own the lots where the trailers were parked and had only oral leases with the park owner. (T. 1322). The effective date of the appraisal was November 30, 1997, because Judge Shea told Mr. Rosendale that he received his eviction notice on December 1, 1997. (T. 1338). In fact, Judge Shea received his notice of eviction in October, or before the effective date used in the appraisal. (T. 1335). The erroneous information on which the appraiser relied came directly from the Judge. (T. 1338). In addition, Judge Shea had actually prepared the prospectus for the mobile home park during the time he was a lawyer, and he failed to inform Mr. Rosendale that he had only an oral one-year lease for the land. (T. 1342-3). This information would have affected the appraisal's outcome. (T. 1340-41). The Panel has given Judge Shea the benefit of the doubt as to whether his conduct with regard to his own appraiser was deliberately misleading and has thus refrained from finding that Judge Shea was intentionally seeking an inflated amount. Notwithstanding, the conflicting evidence surrounding the value of the property raises serious questions about the credibility of Judge Shea's testimony and contemporaneous intentions in response to Charge 1.

Based upon the clear and convincing evidence, as reflected above, and the reasonable inferences in connection therewith, the Panel

concludes that Judge Shea is guilty in the following respects:

The contact with Mulick and Beckmeyer was improper and motivated by Judge Shea's own personal financial interests and his desire to effect the removal of two well-respected attorneys from the representation of a party that he perceived as an enemy. In this regard, he abused his office and intimidated counsel into withdrawing from the representation of their client, the new owner of Coral Key Village. (T. 92; 155; 158; 159). The effect of this was to wrongfully, and without justification, deprive the owners of Coral Key Village of counsel of their choice. Judge Shea should not have threatened to recuse himself from *all* cases in which these lawyers were engaged in the representation of other clients. The telephone calls, regardless of his perceived friendship, were totally improper, as was the suggestion of a buy-out, whether made only for his own property or for his and other owners' properties. The use and abuse of the power of his office in this regard is readily apparent and unacceptable.

As already stated, the Panel makes no finding as to whether the actual amounts sought by Judge Shea were "exorbitant." The facts, however, do raise serious questions as to what happened, why it happened, and the underlying motives. Similarly, although it is not found that Judge Shea made threats to sue the owners while he was a judge or that he used the actual words, "Chicago Mafia," it is found that Judge Shea did tell Mulick that the purchasers of Coral Key Village had a poor reputation, were dishonest businessmen from Chicago and "had acted

in bad faith from the very beginning . . . . " (T. 88; 2492). These comments are just further evidence of Judge Shea's attempt to come between Mulick and Beckmeyer and their client. These were unsolicited and improper comments.

It is not suggested that Judge Shea could not have recused himself in particular cases in which Mulick or Beckmeyer might have appeared if he found the necessity to do so. However, this should have occurred in the context of an actual case and without the suggestion of a trade-off by giving counsel the option of discontinuing their representation and having Judge Shea remain in all of the firm's cases. His direct contacts with these counsel outside the context of any particular case were influenced by his own financial interests and were improper.

When Judge Shea made these phone calls to the law firm, it is absolutely clear from the evidence that he knew there was a pending eviction action as to the mobile home park and that this lawsuit may have rendered his trailers worthless because he did not own the land on which the trailers were parked. Judge Shea had only an informal oral lease on the land.

In sum, Judge Shea violated Canons 1 and 2 of the Code of Judicial conduct by his actions which were dishonorable and improper and did not promote public confidence in the integrity of the judiciary. Although Judge Shea had every right to protect the value of his property, the Panel concludes that he wrongly used his judicial office to promote his own financial interests.

In *In re Graziano*, 696 So. 2d 744 (Fla. 1997), we stated the following in respect to our review of the JQC's findings of fact:

> Before reporting findings of fact to this Court, the JQC must conclude that they are established by clear and convincing evidence. *In re McAllister*, 646 So. 2d 173, 177 (Fla. 1994). This Court must then review the findings and determine whether they meet this quantum of proof, a standard which requires more proof than a "preponderance of the evidence" but the less than "beyond and to the exclusion of a reasonable doubt." *In re Davey*, 645 So. 2d 398, 404 (Fla. 1994). If the findings meet this intermediate standard, then they are of persuasive force and are given great weight by this Court. *See In re LaMotte*, 341 So. 2d 513, 516 (Fla. 1977). This is so because the JQC is in a position to evaluate the testimony and evidence first-hand. See *In re Crowell*, 379 So. 2d 107 (Fla. 1979). However, the ultimate power and responsibility in making a determination rests with this Court. *Id.*

Id. at 753.

Judge Shea admits that he called the attorneys and stated that if they did not withdraw from representing their clients or if their clients did not buy out the trailers, Judge Shea would recuse himself from all of their cases. In addition, one of the attorneys testified that Judge Shea discussed his recusal "in a very threatening manner." The record also reflects that, while not admitting that he threatened the attorneys, Judge Shea did admit that during the discussions it was understood that his recusal would create an inconvenience for the attorneys because they would have to try their cases in Marathon or Key

West. The record demonstrates that Judge Shea used the situation to compel the attorneys to attempt to obtain a buy-out of his trailers at an inflated price. The record contains clear and convincing evidence of Judge Shea's attempts to improperly use his judicial office for financial benefit. The hearing panel concluded that Judge Shea's conduct as to charge one violated canons 1 and 2 of the Code of Judicial Conduct. Canon 1 states that "[a] judge shall uphold the integrity and independence of the judiciary." Canon 2 provides that "[a] judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities." We agree that Judge Shea's conduct as established in the record violated these canons. Our decision is not to be read to indicate that Judge Shea's recusal from a case in which these attorneys were involved would have been improper. What was plainly a violation of the Code was Judge Shea's bargaining in respect to a recusal decision. Judge Shea made it clear to the attorneys that they could either withdraw from representing their clients or have their clients purchase the trailers to avoid his recusal. Such bargaining was an improper use of his judicial office to gain a personal financial benefit and was a breach of the integrity of the judiciary. We agree with the hearing panel that such a breach of judicial integrity can in no way be tolerated.

In addition to canons 1 and 2, the hearing panel found that Judge Shea's conduct as to the remaining charges also violated canons 3 and 5 of the Code of Judicial Conduct. Canon 3B.(4) provides that "[a] judge shall be patient, dignified, and courteous" to those he or she deals with in an official capacity. Canon 5A. requires

a judge to "conduct all of the judge's extra-judicial activities so that they do not . . . demean the judicial office." Judge Shea argues that his conduct as to the remaining charges are not a violation of the Code of Judicial Conduct and that such a finding is not supported by the evidence. We again disagree.

We do not believe it to be necessary to set out in detail the hearing panel's exhaustive findings of fact concerning Judge Shea's conduct in respect to the specified charges. We do point out that conduct unbecoming a member of the judiciary may be shown by evidence of an accumulation of small and ostensibly innocuous incidents which, when considered together, emerge as a pattern of hostile conduct unbecoming a member of the judiciary. *See In re Kelly*, 238 So. 2d 565, 566 (Fla. 1970). As the hearing panel's findings and the record demonstrate, Judge Shea engaged in a pattern of conduct in which he acted with hostility towards attorneys, court personnel, and fellow judges. The totality of the proof in the record supports the conclusion that Judge Shea's conduct in too many instances was not to the standard required of a member of the judiciary. *See id.* Judge Shea's lack of respect and temperament in dealing with others with whom he had contact while he served as a judge seriously undermined public trust in the judicial office. *See In re Graham*, 620 So. 2d 1273 (Fla. 1993).

Judge Shea justifies his conduct as an attempt to improve the administration of justice in the Upper Keys and to improve access to mental health resources in the community. In *Graham*, this Court removed a judge who abused his judicial power but attempted to justify his conduct as an effort to rid the county of what the judge

perceived as political favoritism and corruption. This Court found that the alleged misconduct of others did not justify the judge's departure from the guidelines established in the Code of Judicial Conduct. *Id.* at 1275. Similarly, Judge Shea's allegations of improper conduct on the part of others do not excuse his abuse of his judicial office.

Judge Shea argues that the hearing panel's findings should be rejected in their entirety due to the participation of Judge Frank N. Kaney as chair of the hearing panel of the JQC. Judge Shea moved to recuse Judge Kaney because of Judge Kaney's participation with Judge Miller and Judge Ptomey (who both had filed complaints against Judge Shea with the JQC) in the Florida Judicial College. Judge Shea alleged that comments made by Judge Kaney to Judge Shea led Judge Shea to believe that Judge Kaney "may have had conversations" with Judge Miller and Judge Ptomey concerning Judge Shea's case. Such an allegation is insufficient to support a motion for recusal. To determine if a motion is sufficient this Court looks to see whether the facts alleged would place a reasonably prudent person in fear of not receiving a fair and impartial trial. *See Correll v. State*, 698 So. 2d 522 (Fla. 1997). Allegations that Judge Kaney may have communicated with parties involved in Judge Shea's case do not meet this threshold. Judge Shea's motion for recusal was properly denied.

Removal is the ultimate sanction in judicial disciplinary proceedings. *See In re Graziano*, 696 So. 2d at 753. This Court will approve a recommendation that a judge be removed from the bench when we conclude that the judge's conduct is fundamentally inconsistent with the

responsibilities of judicial office. *Id.* Judge Shea's use of his office to promote his financial interests is inconsistent with the responsibilities of judicial office. *Id.* In addition to using his judicial office for his own financial purposes, Judge Shea also engaged in a pattern of conduct that further demonstrates an unfitness to hold office. While we do not necessarily find that any one of the other offenses charged would constitute a removable offense individually, when considered together, these charges are evidence of Judge Shea's abuse of power and require removal.

Accordingly, for the reasons expressed, Steven P. Shea is hereby removed as circuit judge for the Sixteenth Judicial Circuit of Florida, effective upon this opinion becoming final. We direct that Shea pay the costs of these proceedings, limited to the court reporter per diem fees, deposition costs and costs associated with the preparation of the transcript and record. *See In re Hapner*, 737 So. 2d 1075, 1077 (Fla. 1999). We remand this case to the JQC for a determination of the amount of such costs.

It is so ordered.

HARDING, C.J., and SHAW, WELLS, PARIENTE, LEWIS and QUINCE, JJ., concur.

ANSTEAD, J., recused.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

Original Proceeding – Florida Judicial Qualifications Commission

Honorable Frank N. Kaney, Chair of the Hearing Panel, Thomas C. MacDonald, Jr., General Counsel, and John R.

Beranek, Counsel to the Hearing Panel, Tallahassee, Florida; and Lauri Waldman Ross and Eileen L. Tilghman of Ross & Tilghman, Special Counsel to the Florida Judicial Qualifications Commission, Miami, Florida,

for Petitioner

Arthur J. England, Jr., Paul R. Lipton, and Benjamin L. Reiss of Greenberg Traurig, P.A., Miami, Florida; and James Wattigny, Lafayette, Louisiana,

for Respondent, Steven P. Shea

APPENDIX 2

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING JUDGE STEVEN P. SHEA, NO. 97-376

/

FLORIDA SUPREME COURT CASE NO. 92,913

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS BY THE JUDICIAL QUALIFICATIONS COMMISSION TO THE FLORIDA SUPREME COURT

Pursuant to Article V, Section 12 of the Florida Constitution, as amended in 1996, the Hearing Panel[1] of the Florida Judicial Qualifications Commission issues the following findings, conclusions and recommendations to the Florida Supreme Court in the inquiry concerning Judge Steven P. Shea, Circuit Judge of the Sixteenth Judicial Circuit. The Panel finds Judge Shea guilty and recommends his removal from office. Unless otherwise stated, each of these findings is based on clear and convincing evidence and constitutes the actions of the Hearing Panel of the Commission based on a vote of at least four members of that Panel.

As detailed herein, the Panel concludes that Judge Shea has violated Cannons 1, 2, 3 and 5 of the Code of Judicial Conduct and that he has acted in a manner demonstrating his present unfitness to hold the office of

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[1] The distinction between the Investigative Panel and the Hearing Panel will be observed throughout this document. "The Panel" refers to the Hearing Panel.

circuit judge. Judge Shea suggests he has been the victim of certain judges and lawyers and various public officials and court personnel in the Florida Keys. The Panel rejects this assertion by Judge Shea and, based upon the extensive evidence, concludes that there has been no showing of a plot or anything similar to a plot against Judge Shea.

Background and Suspension From Office

Judge Shea was elected to the Circuit Court in Monroe County, Florida in November of 1994, taking office January 5, 1995, in the Plantation Key courthouse in the Upper Keys. (T. 2430; 2436). For his entire tenure (3 years and 4 months) he has been the only circuit judge in this courthouse located 89 miles north of Key West.[2]

On April 30, 1998, the Investigative Panel of the Judicial Qualifications Commission, which is also the prosecutorial panel, filed a Notice of Formal Charges and simultaneously sought an immediate suspension of Judge Shea by the Florida Supreme Court. The Investigative Panel initially filed 55 charges and the request for suspension was strongly resisted by Judge Shea. On May 7, 1998, the Supreme Court suspended Judge Shea with full pay pending final determination of the charges. Judge Shea had filed an extensive response to the 55 charges during the early Rule 6(b) Investigative Panel proceedings and that response was also filed in the Supreme Court in opposition to his suspension and later as the Judge's

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[2] The legislation creating this circuit judge position in the Upper Keys contains a residence requirement.

Answer herein. The present Hearing Panel is independent from the Investigative Panel and had no role in Judge Shea's suspension. This Hearing Panel has no jurisdiction to deal with Judge Shea's continued arguments against his initial suspension.

The Notice of Formal Charges included general charges in six prefatory paragraphs plus specific charges as examples of the general charges in 33 separate numbered paragraphs. As his Answer to the formal charges, on May 29, 1998, Judge Shea incorporated by reference his "entire 444 page Rule 6(b) Investigative Hearing Response to all 55 charges originally lodged against Respondent." The Answer denied any violation of the Code of Judicial Conduct and sought attorney's fees under Section 57.105, Florida Statutes, for a frivolous proceeding. The voluminous nature of the 444 page Answer makes it impossible to briefly summarize Judge Shea's positions. The Formal Charges were amended on June 11, 1998, and the matter proceeded pursuant to the Amended Notice of Formal Charges which included the same six prefatory general charges plus 37 (in place of the initial 33) numbered paragraphs as specific examples of those charges.

The Prefatory or General Charges

Judge Shea was charged with violations of Cannons 1, 2, 3 and 5(g) of the Code of Judicial Conduct. Removal from office was sought by the Investigative/Prosecutorial Panel through its Special Counsel, Lauri Waldman Ross who was appointed and supervised by the Investigative Panel. Prosecutor Ross handled the suspension of Judge

Shea before the Supreme Court, the filing of the formal charges, the extensive prehearing discovery and related litigation and the extensive trial before the Hearing Panel lasting almost two full weeks in Key West, Florida. (T. 1-2982).

Throughout the trial, the prefatory allegations were referred to as the "prefatory" charges while each of the 37 factual examples of those general charges were referred to as the separate counts or charges. The prefatory charges were as follows:

> You have repeatedly abused the power of your judicial office by engaging in a pattern of vindictive and retaliatory conduct towards anyone who disagrees with you on any subject. Your vindictive and retaliatory actions include, but are not limited to:
>
> (1) publicly holding the disagreeing party up to scorn and ridicule;
>
> (2) launching unilateral "investigations" of the disagreeing party's conduct and character;
>
> (3) issuing self-serving orders which distort the facts and are intended to paint your own actions in the most favorable light, while engendering all manner of punishment for the disagreeing party;
>
> (4) Airing petty grievances publicly, so as to maximize the embarrassment to all concerned, by your conduct;
>
> (5) being verbally and physically abusive to others; and

(6) personally showing disrespect for and encouraging others to show disrespect for fellow judges of your circuit.

Those persons who have been the subject of your abuse include, but are not limited to, your fellow judges, attorneys appearing before you, courthouse personnel, the sheriff's department, court reporters, court clerks, bailiffs, victim coordinators, judicial assistants, the Guidance Clinic of the Upper Keys, and the Domestic Abuse Shelter. This conduct and behavior are exemplified by numerous incidences or occurrences, including the following:

The Specific Charges

Following these prefatory charges are 37 separate paragraphs each describing a related incident supporting the general assertions of an overall pattern of improper conduct. Prosecuting counsel dismissed 12 of those 37 specific charges at the conclusion of the case-in-chief. (T. 1163). The dismissed charges were those numbered 5, 10, 11, 13, 14, 24, 25, 29, 30, 34, 35 and 37. This left a total of 25 charges for consideration by the Panel and each remaining charge will be separately dealt with herein after discussion of certain preliminary matters.[3]

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[3] The Hearing Panel consisted of the Chairman, Circuit Judge Frank N. Kaney, Third District Court of Appeal Judge James Jorgenson, Attorneys Evett Simmons and Rutledge Liles, and Lay Members Bonnie Booth and Nancy Mahon. Special Prosecuting Counsel were Laurie Waldman Ross and Eileen Tilghman. Attorney Thomas C. MacDonald, Jr. served as additional legal adviser to the Investigative/Prosecutorial Panel, and attorney John Beranek served as counsel to the

Pretrial Litigation

In addition to the strongly contested suspension proceedings, extremely bitter litigation occurred during the entire prehearing process. Judge Shea moved to disqualify Judge Kaney from the Panel early in the case. After denial of his Motion for Disqualification, Judge Shea filed a Petition for Prohibition in the Florida Supreme Court and a further Petition for Prohibition in the Third District Court of Appeal, both of which were denied. Judge Kaney acted as Chair throughout.

Discovery efforts by both sides were heavy and aggressive and extensive motion practice occurred. Judge Shea repeatedly argued that discovery should be limited to the specific facts of the 37 charges while the prosecutor argued for a broader scope based on the more general prefatory charges. The Panel ruled for the prosecution and allowed wide latitude in discovery. Witnesses complained of harassment during depositions and because of the cancellation of depositions by Judge Shea's counsel. Extensive motions for summary judgment were filed by Judge Shea's counsel as to each of the 37 charges. Without reaching a specific ruling on whether summary judgment procedure would be appropriate for charges on which the Investigative Panel had already found probable cause

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Hearing Panel. Judge Shea was represented at the hearing by attorneys James S. Mattson and James Wattigny. Judge Shea had also been represented during the extensive pretrial litigation by the Holland & Knight law firm and by the MacFarlain, Wiley law firm. Although no formal withdrawal by these two firms was filed, they did not appear at the hearing and the Panel was informally advised of their withdrawal.

and on which the Supreme Court had already ordered suspension, this Hearing Panel ruled that all such motions should be denied because there were factual issues.

Motions to strike or other objections by the defense were directed to almost every pretrial pleading and on almost every pretrial ruling Judge Shea's counsel requested review by the full Hearing Panel pursuant to Rule 7(b) of the Florida Judicial Qualifications Commission Rules. Full Panel review occurred as to all such rulings and the Chair's rulings were consistently supported by the full Panel.

Prosecuting counsel filed various prehearing motions for sanctions and attorney fees for bad-faith litigation and discovery abuses against Judge Shea. At least two witnesses filed similar motions for asserted discovery abuses. All of these motions have been reserved. Judge Shea has formally notified the Hearing Panel of his intention to file a Motion to Dismiss this entire proceeding for alleged "flagrant prosecutorial misconduct." The panel has not received this threatened Motion to Dismiss, but notes the Section 57.105 motion for fees and the numerous arguments, both written and oral, that the prosecution has been guilty of misconduct. The issues regarding sanctions, discovery abuse and bad faith litigation will be ruled upon herein.

The Hearing Location, Evidence and Arguments

The hearing lasted almost two weeks in Key West, Florida over Judge Shea's repeated objections and motions that it be held in his home area, the Plantation

Key Courthouse, some 89 miles north of Key West. The Panel found Key West to be the most appropriate location and it is within the "county of the judge's residence" as required by Rule 11 of the Commission Rules of Procedure.

The prosecution called 24 witnesses and the defense presented 53 witnesses. The Panel imposed a limitation of three live character witnesses, but allowed the filing of character affidavits. Judge Shea filed numerous affidavits as to his good character and the high regard in which he was held by many lawyers and lay people. A petition signed by 44 attorneys, many from the Keys, was filed in support of Judge Shea. Some 18 out-of-state attorneys and judges signed character affidavits. Judge Shea's counsel also filed numerous affidavits containing the negative views of certain affiants as to other witnesses in the case and as to the prosecution in general. These negative aspects of Judge Shea's affidavits were not considered by the Panel.

The parties submitted extensive written arguments at the conclusion of the hearing. The special prosecutor's summation of the evidence was 48 pages long and Judge Shea's summation of the evidence was 69 pages in length. As stated, Judge Shea's arguments indicate his intent to file a separate Motion to Dismiss the entire proceeding for alleged bad faith by the prosecutor and the Investigative Panel. The case has been hard fought. The transcript is 2,982 pages in length plus numerous depositions. Voluminous documentary exhibits, pleadings and orders were submitted on both sides. All of the exhibits and the complete transcripts are filed along with these Findings,

Conclusions and Recommendations. Judge Shea has been provided copies.

Standard of Proof

The Hearing Panel fully recognizes that the evidence supporting these Findings and Conclusions must be clear and convincing as the Florida Supreme Court has defined that standard of proof in *Inquiry Concerning Judge Davey,* 645 So. 2d 398 (Fla. 1994) and *Inquiry Concerning Judge Graziano,* 696 So. 2d 744 (Fla. 1997). The Panel has applied this clear and convincing standard and finds the evidence meets this test.

Findings and Conclusions as to Specific Charges

The Hearing Panel will rule on each specific charge and thereafter proceed to making rulings on the more general prefatory charges. For ease of organization, each of the remaining 25 specific charges with a descriptive sub-heading will be quoted from the formal charges and will be followed by the Panel's findings and conclusions as to each. When appropriate, closely related charges will be dealt with jointly.

Charge 1. Threatened Recusal and a Personal Financial Benefit

1. In or about October 1997, you improperly contacted Carl Beckmeyer, Esq. And Nicholas Mulick, Esq., local counsel for Coral Key Village, Inc., which was seeking to close a trailer park it owned in the Upper Keys in which you owned two trailers. To advance your own personal interests you wrongly abused the power of your

judicial office by improperly intimidating these lawyers into withdrawing from representation of their client by threatening to recuse yourself from all of their cases pending before you, which action on your part would have caused them and their other clients severe inconvenience because the nearest other circuit judge was stationed at Marathon. You further solicited these counsel to recommend that their clients pay you damages up to $150,000, an exorbitant amount. You further threatened without basis to sue the owners of the trailer park, whom you compared to members of the "Chicago Mafia." The attorneys declined to make this recommendation and withdrew from the case. This withdrawal caused serious inconvenience and unnecessary expense to Coral Key Village, Inc. Thereafter, you continued to act in a retaliatory manner towards these lawyers after the firm was forced to testify about your conduct.

Findings:

With regard to Charge 1, the Panel finds that clear and convincing evidence demonstrates guilt based upon the following events:

The *Keynoter* is an "Upper Keys" newspaper of general circulation. On Saturday, October 18, 1997, an article appeared in the *Keynoter* discussing Coral Key Village (a well-situated tract on which trailers are located pursuant to oral individual annual leases) and the fact that Nicholas W. Mulick, ("Mulick") an Islamorada, Florida, ("Upper Keys") lawyer, was representing the new owners of Coral Key Village. (T. 2462).

As of that date, Judge Shea, who had been on the bench for approximately ten months, owned two trailers

located on Coral Key Village lots. According to Judge Shea, he read the article and noted that "Mr. Mulick was quoted as representing my landlords, who were evicting me . . . and it really surprised me . . . . " (T. 2446). Judge Shea added that he "was surprised to see that . . . two attorneys who were very good friends of mine who appeared in my court all the time were involved in this eviction." (T. 2446).

Immediately after reading the article, Judge Shea called Mulick at his home at 9:00 or 10:00 a.m. on a Saturday. (T. 85; 2462). According to Mulick, Judge Shea told him that he had attempted to reach Mr. Peterson, a Tallahassee lawyer also representing the new owners, by telephone, but finding him out of town, left a message for him and then called Mulick because his name was in the article. (T. 86). According to Mulick, Judge Shea asked him if he knew that he (the Judge) owned two mobile homes "because he thought that if I knew that, I wouldn't be involved in the case." (T. 86; 2463). Mulick informed Judge Shea that he was not involved in any eviction proceedings, that they were being handled by Mr. Peterson, and that he had only been consulted in connection with land-use matters. (T. 86; 2464).

According to Judge Shea, he "explained to Mulick that they can't even evict us unless they get the land-use changed under Chapter 723" and that "if you're working on the land-use . . . that's an essential, integral part of the eviction." (T. 2464-65). Judge Shea continued, saying "It all goes hand in hand basically" and that he thought "we'd be – to me, we'd be at odds." (T. 2465).

According to Mulick, Judge Shea then indicated that "he thought that because I was representing Coral Key Village that I was adverse to his interests and that if we did not recuse or withdraw from representing the client, he would have to recuse himself on all cases where we appeared attorney of record." (T. 87). Mulick told Judge Shea that "we shouldn't be talking about this, that he should talk to Mr. Peterson because he was involved in the eviction matter and not I." (T. 87).

According to Mulick, Judge Shea then stated that if the owners of Coral Key Village were to buy him out, that would render the issue moot, and he would not have to withdraw. (T. 89).

Mulick testified that Judge Shea suggested that the buy-out price on the smaller lot was $50,000.00, with the buy-out price on the more desirable lot being $100,000.00. (T. 89). Judge Shea admits to telling Mulick that "my places are worth up to $150,000.00," but denied saying "give me $150,000.00 and I'm out of here," stating, instead, that he suggested that Mulick's client "buy everybody out . . . and then he can own all the trailers there, and he can leave them there, or he can do what he wants." (T. 2477; 2479).

A short time later, Judge Shea called Karl Beckmeyer, ("Beckmeyer") Mulick's law partner. (T. 154). Judge Shea asked him if he represented Coral Key Village, to which Beckmeyer responded that he thought Mulick was doing some land-use work for the new owners. (T. 154). Judge Shea then reminded Beckmeyer that he (Judge Shea) owned trailers in Coral Key Village, followed by the

statement that "you're adverse to my economic interest." (T. 155).

Beckmeyer further testified that Judge Shea spoke in a threatening manner and told him that if his law firm continued to represent the client, he was going to recuse himself from all of their cases, forcing them to go to Marathon and Key West for all of their hearings and trials. (T. 155). According to Beckmeyer, he was "dumbstruck." (T. 155).

When asked whether upon reading the October 18, 1997, *Keynoter* article it was clear to him that Beckmeyer and Mulick were representing the owners of Coral Key Village, Judge Shea said that it was, and that such representation created a definite conflict between him and Beckmeyer and Mulick. (T. 2902-03). Judge Shea said he called, however, because he felt that "Nick and Karl must not understand that there's a conflict here" . . . "because [he] was under the impression they were very happy practicing in the Upper Keys; they weren't dissatisfied with [him]." (T. 2903). He then decided to "disclose this conflict to them because it is a conflict, it's a problem." (T. 2903).

It was then suggested that Judge Shea's call was to "straighten out a conflict," and did he not see an impropriety in doing so, to which he responded that he did not remember using the words "straighten out a conflict." (T. 2904). However, the record reflects that during the Rule 6(b) hearing on the charges, Judge Shea had testified that he had called Beckmeyer's office "and I said, 'Karl,' I said, 'We need to straighten this out, because there's going to be a conflict of interest for me to hear your cases

if you're suing me or if I'm suing you and you're representing the other side.' " (T. 2822).

In closing, Judge Shea was asked whether his calls to Mulick and Beckmeyer "might be viewed as a veiled threat or a show of muscle by a member of the judiciary, [and] would it not have been the better practice to wait until the first case came . . . before [him] – and at that time say, "I'm going to recuse myself" in open court and let them decide what to do there, rather than a private phone call?" (T. 2906). In response, Judge Shea stated that is what he should have done, rather than what he did. (T. 2906).

Following the contact by Judge Shea, Beckmeyer and Mulick felt that they had no choice but to terminate their representation of Coral Key Village. (T. 95).

While the Panel makes no finding as to whether the actual amounts sought by Judge Shea were "exorbitant," it is noted that Judge Shea called his judicial assistant, Lee El Koury, as a witness on his behalf and she testified she overheard a conversation between Judge Shea and Nick Mulick during which Judge Shea "said a sum of money." (T. 1432; 1434). According to Ms. El Koury, Judge Shea "said $150,000.00." (T. 1435). Following the telephone conversation, Judge Shea then told Ms. El Koury that he thought that the waterfront trailer was worth "about $75,000.00," or $25,000.00 less than what he had represented to Mulick. (T. 1436).

It is of further interest to the Panel in evaluating witness credibility that Judge Shea acquired his former wife's interest in the waterfront lot in December of 1995, approximately two years before conveying to Mulick the

$100,000.00 price. (T. 2901). When asked how much he had paid his former wife for her interest, he stated that "We had a mortgage on it of $40,000.00 . . . and I paid off that mortgage, and that's what I paid for that." (T. 2901). He then conceded that as one-half of the mortgage was, theoretically, his responsibility, he effectively paid her $20,000.00 for her interest. (T. 2901). He did state that they had an "informal agreement" that if he ever sold the place, she would get "whatever equity she would be entitled to." (T. 2901). However, when his attention was called to earlier testimony where he stated that he wanted to retire on the property (rather than sell it) he said "I'd like to live there eventually, right." (T. 2902).

All of this testimony raises serious questions surrounding the actual fair market value of the property, the believability of Judge Shea's statements in this regard and his underlying thought processes and intentions. The testimony shows a representation of a fair buy-out value on the more expensive lot of $100,000.00 to Mulick, but a contemporaneous statement to Ms. El Koury that it was worth "about $75,000.00." The testimony also reveals the Judge's purchase of his ex-wife's interest two years earlier by simply satisfying a mortgage of which only $20,000.00 was attributable to her, coupled with a questionable statement that when he eventually sold it, she would receive her share of the equity. However, the Judge seemed to contradict that testimony by stating that he intended to retire on it rather than sell it. (T. 2902).

The Panel also heard evidence from Mr. Rosendale who was Judge Shea's appraisal expert. Mr. Rosendale testified to a value of $141,000.00 and to Judge Shea's

involvement in the real estate appraisal he presented at the trial. (T. 1323 and Ex. 12).

Mr. Rosendale prepared an appraisal of the mobile homes and arrived at a value of $141,000.00. (T. 1323). Judge Shea did not own the lots where the trailers were parked and had only oral leases with the park owner. (T. 1322). The effective date of the appraisal was November 30, 1997, because Judge Shea told Mr. Rosendale that he received his eviction notice on December 1, 1997. (T. 1338). In fact, Judge Shea received his notice of eviction in October, or before the effective date used in the appraisal. (T. 1335). The erroneous information on which the appraiser relied came directly from the Judge. (T. 1338). In addition, Judge Shea had actually prepared the prospectus for the mobile home park during the time he was a lawyer, and he failed to inform Mr. Rosendale that he had only an oral one-year lease for the land. (T. 1342-3). This information would have affected the appraisal's outcome. (T. 1340-41). The Panel has given Judge Shea the benefit of the doubt as to whether his conduct with regard to his own appraiser was deliberately misleading and has thus refrained from finding that Judge Shea was intentionally seeking an inflated amount. Notwithstanding, the conflicting evidence surrounding the value of the property raises serious questions about the credibility of Judge Shea's testimony and contemporaneous intentions in response to Charge 1.

Based upon the clear and convincing evidence, as reflected above, and the reasonable inferences in connection therewith, the Panel concludes that Judge Shea is guilty in the following respects:

The contact with Mulick and Beckmeyer was improper and motivated by Judge Shea's own personal financial interests and his desire to effect the removal of two well-respected attorneys from the representation of a party that he perceived as an enemy. In this regard, he abused his office and intimidated counsel into withdrawing from the representation of their client, the new owner of Coral Key Village. (T. 92; 155; 158; 159). The effect of this was to wrongfully, and without justification, deprive the owners of Coral Key Village of counsel of their choice. Judge Shea should not have threatened to recuse himself from *all* cases in which these lawyers were engaged in the representation of other clients. The telephone calls, regardless of his perceived friendship, were totally improper, as was the suggestion of a buy-out, whether made only for his own property or for his and other owners' properties. The use and abuse of the power of his office in this regard is readily apparent and unacceptable.

As already stated, the Panel makes no finding as to whether the actual amounts sought by Judge Shea were "exorbitant." The facts, however, do raise serious questions as to what happened, why it happened, and the underlying motives. Similarly, although it is not found that Judge Shea made threats to sue the owners while he was a judge or that he used the actual words, "Chicago Mafia," it is found that Judge Shea did tell Mulick that the purchasers of Coral Key Village had a poor reputation, were dishonest businessmen from Chicago and "had acted in bad faith from the very beginning. . . . " (T. 88; 2492). These comments are just further evidence of Judge Shea's attempt to come between Mulick and Beckmeyer

and their client. These were unsolicited and improper comments.

It is not suggested that Judge Shea could not have recused himself in particular cases in which Mulick or Beckmeyer might have appeared if he found the necessity to do so. However, this should have occurred in the context of an actual case and without the suggestion of a trade-off by giving counsel the option of discontinuing their representation and having Judge Shea remain in all of the firm's cases. His direct contacts with these counsel outside the context of any particular case were influenced by his own financial interests and were improper.

When Judge Shea made these phone calls to the law firm, it is absolutely clear from the evidence that he knew there was a pending eviction action as to the mobile home park and that this lawsuit may have rendered his trailers worthless because he did not own the land on which the trailers were parked. Judge Shea had only an informal oral lease on the land.

In sum, Judge Shea violated Canons 1 and 2 of the Code of Judicial conduct by his actions which were dishonorable and improper and did not promote public confidence in the integrity of the judiciary. Although Judge Shea had every right to protect the value of his property, the Panel concludes that he wrongly used his judicial office to promote his own financial interests.

Charge 2. Threatened Contempt for Petitioning the Governor

2. On May 20, 1997, you entered an order in *State Department of Revenue on behalf of Joann Baptiste v. Everett Baptiste*, directing Ms. Baptiste, a resident of Newark, Delaware, to show cause why she should not be held in indirect criminal contempt of your court for writing a letter to the Governor of Florida complaining of your handling of this case. You stated in your order that the statements in Ms. Baptiste's letter were "directed against the authority and dignity" of the Court, and ordered Ms. Baptiste, a mother of five children without funds, to appear for a hearing in Key West, Florida. At the hearing held on August 11, 1997, Ms. Baptiste appeared by telephone and by court-appointed counsel. Both the Department of Revenue and Everett Baptiste moved to quash the order directing Ms. Baptiste to appear on the grounds of lack of personal jurisdiction and that her actions did not constitute contempt. Chief Circuit Judge Sandra Taylor, to whom the case was transferred, found that the Court had jurisdiction over Ms. Baptiste, but that as a matter of law her conduct did not constitute contempt. Accordingly, the contempt proceeding was dismissed on October 9, 1997.

Findings:

The Panel concludes that Judge Shea is guilty as charged and his actions were deliberate and violated Cannons 1, 2(A) and 3 of the Code of Judicial Conduct. Joan Baptiste was divorced in 1994 in Key Largo and moved to Delaware with her five minor children. (T. 457).

She had little money while seeking to finish her education and become a teacher. She was in need of child support. (T. 457-58). Mr. Baptiste was chronically behind in his child support payments and the Florida Department of Child Support Enforcement (FDCSE) repeatedly took him to court before Judge Shea to obtain back payments with little success. (T. 458-59).

On April 6, 1997, Ms. Baptiste was without funds and wrote a letter to then Governor Lawton Chiles in which she detailed the many attempts she had made to collect the court ordered child support. (T. 459; 461-62). This letter was stipulated into evidence and stated in part:

* * *

> For some reasons, the court in Key Largo will not help my children collect the support that their father agreed to give them. After three years and several reductions in payment, the arrears total over $15,000. Child support workers in Delaware, as well as Patty Pearce in Key West, have worked tirelessly to bring this problem to the attention of Judge Steven Shea, but payments are always below what Mr. Baptiste agrees to pay or non-existent. We have gone for a year at a time with no support at all. All rulings have been in favor of Mr. Baptiste. He has received every request for a reduction in payment.
>
> * * *
>
> If Judge Shea would serve his elected position as one who upholds his own rulings as well as the laws, my children would have much more of a chance to survive and hopefully prosper. I would appreciate any help you could give me in

rectifying this callous abuse. Thank you. (Resp. Ex. 13).

At the next hearing which was set by the FDCSE to hold Mr. Baptiste in contempt for non-payment of child support, Judge Shea was given a copy of Ms. Baptiste's letter to the Governor. In reaction, on May 20, 1997, Judge Shea issued an order "directing Joan Baptiste to show cause why she should not be held in contempt," finding that "the attack upon the Court [through the letter] may constitute an indirect criminal contempt of court." (Resp. Ex. 14). Judge Shea had his order personally served on Ms. Baptiste at her home in Delaware. Despite his knowledge of Ms. Baptiste's lack of funds and out-of-state residence, she was ordered to appear at the courthouse address in Key West, Florida for a criminal contempt hearing against her. (Resp. Ex. 14). Judge Shea recused himself from the case in the same Order to Show Cause and the matter was reassigned to another judge. Judge Shea's show cause order made it appear he was ruling on a "motion for contempt" pending against Joan Baptiste when, in fact, no such motion was pending against her.

The personal service and content of the show cause order seriously frightened Ms. Baptiste. (T. 463). Judge Shea should have expected no less. As disclosed in her letter to the Governor as read by Judge Shea, Ms. Baptiste had no funds whatsoever and Judge Shea did not inform her she could attend the hearing by telephone. (T. 463; 466). She was upset that Judge Shea was using his power in this intimidating manner merely because she had written the Governor. (T. 464). Ms. Baptiste was forced to expend funds she did not have in her effort to obtain representation. (T. 465).

Ms. Baptiste testified at the JQC hearing and was found to be very credible. Criminal contempt is a serious offense which Ms. Baptiste well-knew. (T. 464). Moreover, she testified that Judge Shea's order had a great impact on her confidence in the judiciary because, "if I can't turn to the Court to help me with this, there is no other place." (T. 467).

The successor Judge (Judge Sandra Taylor) ultimately allowed Ms. Baptiste to attend the hearing by phone and discharged the Order to Show Cause, finding that the letter contained constitutionally protected criticism. (T. 381; 383; 407-08). There was no suggestion by Judge Shea before this Panel that there was anything in the Baptiste letter which was inaccurate or even exaggerated.

Judge Shea's position at the hearing (contrary to his Answer) was that his order had been a mistake and that he had been too "thin skinned." (T. 2540). However, he absolutely refused to admit any violation of the Canons and said he thought his order was justified by *Justice v. State*, 400 So. 2d 1037 (Fla. 1st DCA 1981). (T. 2837-40). Judge Shea relied upon this particular case in his written Answer, his oral testimony and his written closing argument.

In the *Justice* case, Mr. Justice purchased newspaper space in which he published his own personal letter making "scurrilous allegations regarding a judge's private life." Mr. Justice was found in contempt for publishing this "personally embarrassing" and offensive material. The District Court of Appeal reversed the contempt order concluding the letter was not directed against a judge's judicial authority or dignity and did not

obstruct the administration of justice. The *Justice* decision simply does not support the threat of criminal contempt against Ms. Baptiste for her letter to the Governor.

Judge Shea's actions against Ms. Baptiste were deliberate and calculated and violated Canons 2(A) and 3 of the Code of Judicial Conduct. His conduct had a devastating impact on Ms. Baptiste and her family, and is clear evidence of his bias, unfairness and vindictiveness against a person who dared to criticize him. Judge Shea abused his judicial power.

Charge 3. Threats of Contempt and Deprivation of Funding Against the Guidance Clinic

3. You were advised repeatedly that the Upper Keys Guidance Clinic did not perform custody evaluations. Thereafter, you unsuccessfully sought to hold Barbara Martin, a counselor at the clinic, in case no.: *PK97-20-3000-FR-22* in indirect criminal contempt for allegedly violating a court order. In fact, Ms. Martin was not in violation of any court order. When this was pointed out, you thereafter sought to retaliate against the clinic by ordering it to produce its financial records and by threatening to put the Guidance Clinic out of business.

Findings:

Again, the Panel concludes Judge Shea abused his contempt powers. As the only circuit judge in the Upper Keys, Judge Shea had broad jurisdiction and responsibility. (T. 2436-7). The Upper Keys Guidance Clinic (Clinic) is a private community mental health clinic which receives some public funding. (T. 496-97). Judge

Shea's last employment before running for judicial office was as a Certified Addiction Professional with Florida Lawyer's Assistance, Inc. (F.L.A.). (T. 2413). Judge Shea had a keen interest in substance abuse and mental health issues and saw himself as a crusader on these issues. (T. 542-3; 2419-2426). Early in his tenure, Judge Shea was advised by Dr. Matthews, the Clinic's Executive Director, that the Clinic did not perform custody or visitation evaluations. This type of service was simply outside the scope of the Clinic's policy. (T. 512).

Judge Shea strongly disagreed and insisted that the Clinic perform these services. In *Wood v. Wood*, on June 13, 1997, Judge Shea ordered Mr. Wood to undergo a psychological evaluation with Barbara Martin at the Clinic. (T. 479-80). This order was directed to Mr. Wood and not to Ms. Martin. (T. 386-87; 485; Resp. Ex. 47). By interviewing the patient, Ms. Martin determined that the purpose of the evaluation concerned pending litigation issues of visitation and custody. (T. 485). Ms. Martin advised the patient, the guardian ad litem, and others, that the Clinic's policy was against performing such evaluations. (T. 486-88).

Judge Shea learned of Ms. Martin's actions and, in response, on July 3, 1997, he served Ms. Martin with an order to personally appear before him and show cause "why she should not be held in indirect criminal contempt of court for her failure to comply" with the prior order. (T. 489-90; Resp. Ex. 54). Dr. Mathews and Ms. Martin, together with their counsel, appeared on July 15, 1997. (T. 385; Resp. Ex. 54). They pointed out that there was no order in effect directing Ms. Martin to do anything and therefore, no jurisdictional basis for a contempt

citation. (T. 388). At the hearing, Judge Shea was described by Ms. Martin as being angry. (T. 491; 493). He expressed his frustration that other facilities had seemingly "jumped through hoops" for him, while this Clinic did not do so. (T. 493-94; Resp. Ex. 64). Judge Shea stated that his next action would be "to talk to whoever funds the Upper Keys Guidance Clinic to see if we can take the funds and put it in a facility who is willing to provide some services to the court." (Resp. Ex. 64, p. 4). He also threatened the Clinic with "more drastic action." (T. 494). The Clinic personnel understood these statements as threats. (T. 494).

Shortly thereafter, Judge Shea issued two orders terminating the therapeutic treatment of two juveniles by the Clinic. (T. 507-08). Judge Shea further called the Department of Corrections, with whom the Guidance Clinic had a contract, and ordered the Department to send no further patients to it. (T. 513). The Clinic's Chief Executive Officer, Richard Matthews, was flabbergasted at Judge Shea's action and saw it as vindictive. (T. 509). He termed the Judge's action in cutting off services for two children based upon his anger at the Clinic as "reprehensible." (T. 508).

Judge Shea went further. Under the impression that Dr. David Rice, the Chief Executive Officer of the Guidance Clinic of the Middle Keys, was Dr. Mathews' supervisor, Judge Shea contacted Dr. Rice. (T. 539; Shea Depo. pp. 118-19). Judge Shea told Dr. Rice that he was quite unhappy with the Upper Keys Clinic's refusal and "that he was going to do everything in his power to affect their funding." (T. 540).

In the course of his conversation with Dr. Rice, Judge Shea pointed out an embarrassing incident in the Guidance Clinic's record and stated his intention to use this information in a damaging way to negatively impact the program in the Upper Keys. (T. 541). When Dr. Rice suggested this would be unfair, Judge Shea advised him that "when you're in a war, you do whatever you have to do to win it." (T. 542-43).

Judge Shea attempts to justify his conduct by his motive to provide the public with low cost psychological services. (Shea Depo. p. 120). There can be no such justification. *See Inquiry concerning a Judge (Gary G. Graham)*, 620 So. 2d 1273 (Fla. 1993). Judge Shea's use of contempt proceedings along with the full power of his office to bring financial pressures to bear on the Guidance Clinic is the antithesis of Canons 1, 2 and 3 of the Code Judicial Conduct. In his efforts to embarrass and punish the clinic, Judge Shea abandoned fairness and acted more like a dictator than a judge. Again, as in the Baptiste matter, the use of threatened criminal contempt against a person who was not even the subject of an order cannot be justified. The Martin show cause order was entered 43 days after the Baptiste show cause order. When the error of threatening contempt against Martin was pointed out, he further responded by going after the Clinic and used his judicial role to do so.

Charge 4. Videotaping a Suspected Attorney

4. In or about November 1997, you requested Deputy Michael Kaffee to video tape Sherry Collins, Esq.

While she was appearing at a hearing before you because you regarded her as a potential election opponent.

Findings:

The Hearing Panel does not find clear and convincing evidence of guilt as to this charge, but will describe the facts because we deem them relevant. Judge Shea agreed he had attorney Sherri Collins videotaped in his courtroom. (T. 2574). There was evidence this was done because Sherri Collins was perceived to be planning to run against Judge Shea in the next election. (Lawson Depo. pp. 64-72; Pet. Ex. 7 to Lawson Depo.). There was also evidence that the taping occurred because Judge Shea had been told that Collins intended to be disruptive in his courtroom. (T. 2576).

According to Judge Shea's hearing testimony, at some time prior to November 14, 1997, he was tipped-off by a "newspaper" man who called him at home telling him that Collins was to appear before him and was planning to be disruptive so he would hold her in contempt. (T. 2576). Judge Shea had his bailiff Mike Kaffee videotape Collins at that hearing. (T. 2574). Nothing untoward occurred and Judge Shea had his bailiff erase the tape. (T. 257-78). This was done without Collins' knowledge. (T. 2175-6).

Judge Shea admitted the taping and that it was the only time he ever taped a lawyer. (T. 2176; Shea Depo. pp. 352-355, 359). He denied any knowledge that Collins was an anticipated election opponent and claimed the taping was proper because he was attempting to deter Collins from acting "inappropriately." (T. 2579). While Judge

Shea's conduct in this incident causes the Panel concern, the evidence on this point was less than clear and convincing and the charge is thus dismissed.

Charge 6. Grievances Against Support Staff Re Domestic Abuse victims

6. You repeatedly limited the rights of domestic violence complaints *pro se* petitioners by restricting court support personnel from assisting such persons as required by law. In this respect you required court personnel to submit affidavits negating the furnishing by them of such assistance, thereby effectively chilling the willingness of victims and assistants to come forward with legitimate claims.

Findings:

The Panel concludes that Judge Shea is guilty of this charge. On May 9, 1997, Judge Shea became unhappy with the Domestic Abuse Shelter ("Shelter") because of his perception that one of its workers, Jane Martin, had voiced criticism of him while she was on a trip out of town. (T. 551-553; 559) . He summoned the Shelter staff and its director to his office for a meeting, voicing his displeasure with Martin. (T. 551-52). On May 12, 1997, Judge Shea demanded that the Shelter staff complete a form he created which states as follows:

CERTIFICATION BY STAFF OF
DOMESTIC ABUSE SHELTER

I, ___, am employed by the Domestic Abuse Shelter Office in the Upper Keys, and hereby

> certify under penalty of perjury that I am the person who has typed and/or filled out the attached Petition for Injunction Against Domestic or Repeat Violence, that all allegations set forth in the Petition were directly communicated to me by the Petitioner, that I have read in full to the Petitioner this Petition for Injunction as well as the specific acts of domestic/repeat violence set forth therein, and the Petitioner agrees that all facts and allegations set forth therein are true and accurate.
>
> Under penalty of perjury, I declare that I have read the foregoing and the facts alleged are true and correct.
>
> DATE AND SIGNED this ___ day of ___, 1997.
>
> _____
> STAFF MEMBER, DOMESTIC ABUSE SHELTER

(T. 556-57).

He included this in a faxed order to the Shelter office on May 13, 1997.

On June 18, 1997, Judge Shea dismissed an injunction petition claiming a Shelter worker had fabricated its contents and ordered the Shelter director to personally review a hearing transcript and report back to him. (T. 563; Ex. 8 to Shea Depo.). On June 30, 1997, the supervisor reported that the staff member had acted properly, and advised the judge that it was not uncommon for domestic abuse victims to recant their initial complaints of abuse. (T. 565).

The Shelter objected to Judge Shea's certification, explaining that the form made the staff witnesses against their own clients. They refused to execute it and feared

that the Judge would hold them in contempt. (T. 557; 576). On August 18, 1997, Judge Shea wrongly announced in a letter to the Free Press newspaper that the Shelter "agree[d] with" the use of his form. (T. 566-67; Resp. Ex. 84). On August 22, 1997, the Shelter director once again outlined the problems with Judge Shea's certification. (T. 567). On August 25, 1997, Judge Shea accused the Shelter staff of the unauthorized practice of law. (T. 568; Pet. Ex. 18). On September 19, 1997, Judge Shea sent the Shelter staff a newspaper article about "exaggerated domestic abuse claims," with a copy to the State Attorney's office. (Pet. Ex. 19; T. 570-71).

On December 8, 1997, by administrative order, the 16th Judicial Circuit judges, by majority vote, decided to issue one uniform petition circuit-wide, which did not contain Judge Shea's certification. (Resp. Ex. 86; T. 572-73). Nevertheless, Judge Shea continued to add the certification to the "uniform petition" and to insist that Shelter staff sign it. (T. 573). On February 27, 1998, more than two months after the "uniform petition" took effect, Judge Shea issued an order referring the Shelter to The Florida Bar for the unauthorized practice of law. (T. 573-76; Pet. Ex. 21).

Workers at the Shelter were deeply troubled by the Judge's public pronouncements and complaints about their conduct. (T. 571). They sought advice on what they were to do about his certificate from Judge Ptomey and also contacted Chief Judge Sandra Taylor. (T. 567; 1110-1111).

During the period of Judge Shea's displeasure with the Shelter, some of the staff stopped assisting domestic

abuse petitioners because of their fear of what Judge Shea would do to them. (T. 576-7). Shelter workers stopped going to court because they felt that their presence would have a negative effect on the outcome for victims appearing before the Judge. (T. 576-8).

The Panel finds Judge Shea guilty as to this charge in that he repeatedly disrupted the handling of domestic violence *pro se* complaints by unilaterally imposing unreasonable requirements on the filing of such petitions. These requirements materially affected the handling of domestic violence cases and unreasonably placed Shelter personnel in jeopardy or at risk in the performance in their assigned duties.

This conduct violated Canons 1, 2 and 3(c)(1) of the Code of Judicial Conduct. It not only discouraged cooperation between court officials, it had an adverse impact on the administration of justice in the Circuit.

Charge 7. Clerk Inks' Harassment

7. At a time between May and November 1995, you called Deputy Clerk Leslie Inks into your chambers, discussed your plans to marry and improperly hinted that you also would like to have a relationship with Ms. Inks. Subsequently on November 21, 1995, you harassed Ms. Inks, informing her that you were a bachelor for a week.

Findings:

The Panel finds no clear and convincing evidence as to this charge and dismisses this charge.

Charge 8. Pattern of Antagonism Re Court Staff and Judge

Charge 9. A Judicial Unilateral Investigatory Deposition

8. After your election, you informed your judicial colleague, Judge Ptomey, in or about 1995, that as a judge you planned to correct problems you perceived to exist in the judicial system in Monroe County, that you believed the Sheriff's Department to be corrupt and incompetent, and that the Trial Court Administrator Theresa Westerfield and her staff were incompetent and should be fired. You further criticized your fellow judges and the court clerks because they were not enthused about your successful election campaign. With this motivation you began, and have continued an improper pattern of verbal and other abuse towards court support personnel, bailiffs, court reporters and your fellow judges.

9. On July 12, 1996, you interfered with an internal inquiry by the Sheriff's Office of Monroe County into the conduct of Deputy Barney by examining a witness about the subject of the investigation, under oath, on your own. (Transcript p. 2). Such examination was done without notice to Deputy Barney, and without the presence of any counsel on his behalf.

Findings:

These two charges are closely related and will be dealt with jointly. The Panel concludes that Judge Shea is guilty of both charges.

Judge Shea characterized himself as a "warrior" who intended to change the corruption and incompetence he perceived in the court system of the "Conch Republic"; the 16th Judicial Circuit. (Shea Depo. p. 658; T. 971-72; 973; T. 542-43; 1106). His pretrial position was that the State Attorney opposed his election and that there was a conspiracy comprised of current and former members of the State Attorney's office and various other members of the "Bubba system" which was the way law was practiced in the Keys. (T. 2869-2873; Response to Evidence pp. 2-4, 9 n.4). Judge Shea believed that he was the target of this "courthouse gang" conspiracy. He suggests in his written closing argument that the style of the Keys was "laid-back" and that his "style" was that of "high standards of honesty and professionalism." (Response to Evidence pp. 3-4). He suggests that these "traits in a judge" were not welcomed by the Bar and "produced complaints, formal and informal, to the Judicial Qualifications Commission." He argues that his adherence to strict rules against *ex parte* communications forced lawyers into uncomfortable positions. He suggests that, before he arrived on the scene, lawyers were able to "solve their clients' problems with a telephone call or a visit to the judge." He argues that after his election, lawyers had to start practicing law and not "politics" with judges. (Response to Evidence pp. 1-4).

Other than Judge Shea's own statements and his counsel's written accusations and arguments, there was no evidence to support the theory that lawyers in the Keys were able to simply contact judges in an *ex parte* fashion to solve their clients' problems. There was no evidence that counsel generally made such phone calls to

judges. Indeed, there was no evidence of any phone call to a judge which supposedly influenced a judge or a case. There was evidence that Judge Shea once refused to take a phone call from State Attorney Kirk Zuelch and that Judge Shea believed this was a major reason why the State Attorney was out to get him. (T. 2869-2873).

The Panel rejects Judge Shea's contention that he was the victim of a conspiracy or any other adverse reaction to his demands for "high standards of honesty and professionalism." Although argued by Judge Shea, there was no evidence that this was the motivation for complaints being made to the JQC. There was certainly no evidence that the rejected phone call caused Mr. Zuelch to have his staff complain to the JQC concerning Judge Shea.

Judge Shea told Judge Ptomey that the Court clerks were incompetent, that they were displeased at his election and that he was going to make changes. (T. 971-72). Judge Shea characterized certain individuals (such as Mr. Zuelch) as being nonsupportive of his campaign, and felt that many people were "out to get him." (T. 972; 2869-2873). He told Judge Ptomey that the sheriff's department was the most corrupt, incompetent organization in Monroe County. (T. 971). He was highly critical of the clerks, the sheriff's office, the bailiffs, some past judges and other agencies with which he was going to work. He saw them as impediments to his success. (T. 971; 973; 1024-25).

In fact, and contrary to his suspicions, many of the people Judge Shea suspected were extremely happy to see him in office and had literally "danced on the tables"

the night of his election. (T. 973). Nevertheless, his suspicions continued. Judge Shea had his office professionally swept for bugging devices shortly after moving in. (T. 2172; 2812-14). Nothing was found. Various witnesses testified to minor events being blown all out of proportion. (T. 204-05; 432; 439; 451-53; 985-993; 1001-002; 1024-25; 2173-4).

When Judge Shea served as Acting Chief Judge for one week, he placed on the agenda his proposal that the court take over the sheriff's court-security responsibilities. (T. 1129-30). He invited the mayor, the sheriff's department, court security and the county commissioners to attend a judge's meeting to discuss the takeover. (T. 1130). Despite previously telling Chief Judge Taylor that his proposal to take over court security was not a good plan, Judge Shea put this item on the agenda because he "just wanted to shake up the Sheriff's department. . . . " (T. 1131). It was not his prerogative to set the agenda. (T. 1131).

County Judge Wayne Miller detailed an instance in which he released a defendant on bond because he believed a bond set by Judge Shea was based on an invalid warrant. (T. 940-41). Judge Shea sent him a cryptic note, to which Judge Miller responded by phone. (T. 941-42). When Judge Miller asked why Judge Shea felt it necessary to write and not pick up the phone to call him, Judge Shea responded that Judge Miller "had committed an illegal act by changing his bond . . . . " (T. 942). When Judge Miller remonstrated that the issue was one of fairness, and he did not think it was fair to keep someone in jail 20 or 30 days on an invalid warrant, Judge Shea responded that "he did not really care about that . . . the

worst that would happen to him was that the case would be reversed on appeal." (T. 942-43). As Judge Miller described it, "his demeanor and attitude changed so much it was like letting an animal out of a cage. . . . I was shocked and really dismayed by the attitude that he showed and the aggressiveness of his tone." (T. 947-48). Judge Miller concluded from that exchange that "Judge Shea had labeled me some enemy to the people . . . " and they would be unable to work together cooperatively in the future to administer justice. (T. 964-65).

Judge Ptomey also reached a similar conclusion. On December 7, 1995, he became convinced Judge Shea was unfit to sit as a judge. On that day, Judge Ptomey visited Judge Shea to get his direction on a uniform dress code. In an unexplained shift in subjects, Judge Shea showed him a memo directed to the attention of Bailiff Steve Barney, which referred to an attachment which was a proposed uncomplimentary letter to the Sheriff concerning Barney. (T. 975; Resp. Ex. 245). Judge Shea told Judge Ptomey that the "real reason" for the memo was that Barney was overheard at a fraternal police meeting making remarks critical of Judge Shea. (T. 977-78). The memo warned Barney to "discontinue immediately your continuous malicious gossiping which has been characteristic of your service thus far." (Shea Depo. Ex. 35). Judge Shea added that "Any violation of these or any further instructions to be submitted in the future will result in an immediate complaint to the Sheriff as well as any other appropriate action." (Shea Depo. Ex. 35). Attached to the memo was the letter Judge Shea proposed to send to the Sheriff, Barney's boss. (Shea Depo. Ex. 35).

The draft letter to the Sheriff was not actually sent by Judge Shea. Instead, Judge Shea indicated it would be held back unless Barney displeased him in the future. (T. Shea Depo. pp. 747-48). Deputy Barney then turned himself in – he took the memo and its attachment to the Sheriff's office and reported it all himself. (Shea Depo. pp. 748-49). When the Sheriff's office approached the Judge to inquire, Judge Shea "revised" his letter of complaint about Barney (Shea Depo. p. 750). The "revision" added a new charge that Barney had gone through the Judge's desk and through his "personal confidential mail," and had Barney making new "admissions" to the Judge which had never been previously mentioned. (Shea Depo. Exs. 35 and 36).

While the Sheriff's review of Deputy Barney was pending, Judge Shea learned of a new and probably legitimate problem concerning Barney's conduct with a young domestic violence offender named Victoria Arena. Arena and her sister had been in an altercation and Arena, who was young and had a serious drug problem, had been enjoined and removed from the residence. Barney released Arena from the county lock-up and took her to his own home on Christmas Eve where she spent the night. (T. 1022-23).

Rather than reporting the incident directly to law enforcement, Judge Shea summoned Victoria Arena to his chambers and took a private sworn statement from her. (T. 1026-27; Resp. Ex. 95). Judge Shea told Judge Ptomey of his intention to give the sworn statement to the newspapers. He was dissuaded only when his colleague Judge Ptomey agreed to join him in making a formal sheriff's complaint. (T. 981; 983; Resp. Exs. 96-97). Judge Ptomey

did so only to pacify Shea and to diffuse the matter. As Judge Ptomey described it, "He was out to get this guy [Deputy Barney]. I think that is clear by his correspondence of December 7th and [then] this [Arena] opportunity fell in his lap." (T. 1026). As Judge Ptomey testified, Judge Shea's unilateral investigation of Barney was "out of bounds because of the attitude he [already] had about the man." (T. 1026-27).

Although Charge 9 (the Arena statement) is directed to alleged hostility toward the court personnel, the Panel is also concerned that Judge Shea was acting totally outside his proper judicial role in carrying out his own private investigation. Even if he believed Barney's conduct with Arena may have been criminal in nature, such an investigation was the job of law enforcement or the State Attorney rather than a trial judge.

The harassment and hostility toward court personnel also extended to the Clerk's Office. Judge Shea threatened the assessment of attorney's fees against the Clerk for the "lack of quality control throughout the Clerk's office." (Resp. Ex. 248 and 249).

Judge Shea issued unilateral orders to bailiffs and court reporters which pitted them against their supervisors. (T. 2178-2183; Pet. Exs. 43). He also issued orders prohibiting supervisory personnel from issuing directions counter to his own. (T. 1076-77; 1082).

One individual singled out by Judge Shea as a particular target was court reporter manager Lisa Roeser. (T.

1080-1090; 1104). Indeed, Judge Shea wrote a memorandum castigating her personally and circulated that memorandum to the Upper Keys Bar Association. (Resp. Ex. 193).

Judge Shea attempts to justify many of his actions based on his professed interest in ridding the county of perceived corruption and favoritism. Judge Shea's counsel asserts in his written closing argument that the "Bubba system" had been in use and that lawyers were now no longer "able to solve their clients' problems with a telephone call, or a visit to the judge." Even assuming such motives, as in the *Graham* case, Judge Shea's methods were not acceptable. Judge Shea's actions towards court personnel, as well as his colleagues, were violative of Canons 1, 2 and 3(c)(1) of the Code of Judicial Conduct. Judge Shea not only created dissension between co-workers, he pitted them against each other and their supervisors. This pattern was calculated and intentional as exemplified by the Barney letter/memo which was used as a threat and then revised and made even more critical after Deputy Barney turned himself in to his superiors. Judge Shea's treatment of his judicial colleagues was likewise improper and the antithesis of that expected of a judge. This conduct substantially lessened the public respect for members of the judiciary other than Judge Shea.

The Panel does not accept Judge Shea's arguments that judges in the Sixteenth Circuit could be informally "contacted about a case" and that the other judges and the bar reacted adversely because *only he* demanded "high standards of honesty and professionalism from attorneys." (Response to Evidence, p. 4). **Charges 12 and**

18. Conflict with Bailiff Melody Wilkinson (also see Charge 8)

12. On or about June 16, 1997, you filed a complaint with the supervisor of Melody Wilkinson, court security supervisor, concerning her actions in denying access to a juvenile delinquency proceeding to a reporter. When Mrs. Wilkinson sought to explain her actions to you, you slammed a door in her face and refused to discuss the matter.

18. On or about September 4, 1997, you inappropriately criticized Melody Wilkinson, Court Security Supervisor, and her personnel, for requiring Rex Lear, a court reporter, to go through a metal detector. You slammed your hand on a desk and stated to Mrs. Wilkinson that she "must use common sense in letting people in the courthouse." You informed Mrs. Wilkinson that she had no common sense and that she and her personnel should get out of your office because you did not "want to look at" them.

Findings:

The Panel concludes that Judge Shea wrongly engaged in a running conflict with Deputy Melody Wilkinson, the bailiff supervisor who replaced Steve Barney.

On March 7, 1997, Bailiff Michael Kaffee had his gun exposed too close to an inmate who could have grabbed it. (T. 843; 844; Resp. Ex. 123). This created an emergency situation to which other bailiffs, including Wilkinson, responded. (T. 846-47).

After court, Judge Shea followed Wilkinson into the coffee room and shut the door. (T. 846). He was angry and loudly told Wilkinson that if the inmate had grabbed Kaffee's gun, "I'd have pulled mine out and shot him." (T. 846-48). Wilkinson reported Kaffee because of her concerns as bailiff supervisor. (T. 859-61).

Wilkinson also made a judgment call to keep a news reporter from attending a juvenile hearing before Judge Shea. (T. 853-54). She attempted to get a note to the Judge seeking his direction, but was unable to do so without disrupting the proceedings. (T. 85254). When the newspaper subsequently reported that the hearing was closed, Wilkinson learned that the Judge was upset with her and went to talk to him. (T. 855-56). Judge Shea refused, indicating "No. I don't have anything to say to you" and slammed the door. (T. 856).

Wilkinson not only admitted making an error, she sought and received permission from the sheriff to write the newspaper, accepting full personal responsibility. (T. 861-63; Pet. Exs. 31 and 32). However, Judge Shea was not satisfied. He demanded in a memo a "full supervisory review" of Wilkinson's actions, which was not limited to press exclusion, but instead castigated Wilkinson for filing a "complaint against [his] personal bailiff," for the earlier dangerous situation. (T. 858-59).

Judge Shea then complained that Wilkinson had submitted a "false" narrative report and violated his confidence in disclosing the coffee room conversation because "I directed her to keep my conversation with her private. . . . " Judge Shea concluded his memo by barring Ms. Wilkinson "from [his] chambers or courtroom [or]

from directly supervising any of my bailiffs until the supervisory review was concluded." (T. 862-3). Judge Shea's response to the dangerous situation created by his own bailiff was to ban the bailiff supervisor from his courtroom and to preclude her from bailiff supervision. (T. 862-63).

Judge Shea became extremely adverse to Wilkinson and this was a part of his overall pattern of conflict with court support personnel. The Judge took away his bailiff's keys to his office because he feared Wilkinson would order the bailiff to turn over the keys to her. (T. 2173-4). On another occasion, court reporter Rex Lear complained to Judge Shea that he was being forced to go through the magnetometer. (T. 917-18). Ms. Wilkinson attempted to explain that procedure called for everyone to go through the machine. Judge Shea ordered her to get out of his office and to use common sense. (T. 918-19).

Judge Shea's actions towards Ms. Wilkinson violated Canons 1, 2 and 3(c)(1) of the Code of Judicial Conduct and were part of his overall pattern of conflict with court support personnel. Whatever his perception of Wilkinson's shortcomings, they did not justify the treatment she received and the overall harm to and disruption of the judicial system.

Charge 15. Personal Agenda and Threats in a Capital Case

Charge 16. Recusal Order with Statements on Ineffective Capital

Defense Counsel

15. On or about February 21, 1997, in the case of *State v. Overton*, you entered an order improperly implying that Chief State Attorney Jonathan Ellsworth and attorney Jason Smith were guilty of unethical conduct without affording them an opportunity to respond, and by threatening that you would refer any failure of counsel to comply with any of your directives to the Chief Justice of the Supreme Court of Florida, who had no jurisdiction in the matter at that time. You improperly sought to discuss this matter with the Chief Justice and furnished him with a copy of your order. You further advised the defendant and counsel on March 11, 1997, that the justices or a justice of the Supreme Court were keeping an eye on the case.

16. After denying, without hearing, a proper motion for recusal in *State v. Overton*, you then improperly entered an order of recusal dated September 19, 1997 styled "Memorandum of Concern as to Ineffective Assistance of Counsel and Order of Recusal." This document improperly and inaccurately criticized defense counsel without affording them an opportunity to respond. The defendant later specifically denied that his counsel were ineffective. Following an evidentiary hearing, Circuit Judge Mark Jones on October 8, 1997 affirmatively found the representation to be effective, and vacated your memorandum.

Findings:

The Panel finds Judge Shea guilty as to both of these charges. *State v. Overton* was a capital murder case. After five years without an arrest, finally, in December 1996, the Defendant Overton was charged with the murder of a couple and their unborn child. Both the State and the Defendant were represented by counsel at an early status conference of February 18, 1997. However, Judge Shea was dissatisfied because certain additional counsel were not present. On February 21, 1997, Judge Shea entered an order stating he was "concerned about the failure of Mr. Ellsworth and Mr. Smith [defense counsel] to comply with this Court's order to attend." Judge Shea ordered "all counsel of record to personally attend each hearing in this matter" indicating further that "failure of counsel to comply with this directive or any other directive of this Court in this matter shall result in an immediate referral to The Florida Bar and the Chief Justice." (Resp. Ex. 204).[4]

Judge Shea's dissatisfaction stemmed from his apparent belief that lead counsel should attend all hearings regardless of their importance or magnitude, a requirement the Panel believes to be inconsistent with customary practice. Judge Shea announced in open court that he had discussed this matter with the Chief Justice of the Florida Supreme Court, who was "keeping an eye on the case." (T. 208-09; Pet. Ex. 8). He sent a copy of his order directly to the Chief Justice which was of course the reviewing Court in the case. (T. 292-93). The threat of "referral to

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[4] What Judge Shea was mandating was that all counsel aligned with the respective sides appear, not just counsel with authority to act.

The Florida Bar" clearly meant that the lawyers would be reported to The Florida Bar on ethical grounds if they were thought to have violated any future "directive" by the Judge.

Judge Susan Schaeffer, the Chief Judge of Pinellas County and a recognized expert in capital cases, testified that there was no conceivable justification for Judge Shea sending his February 21 order to Chief Justice Kogan. (T. 295). Judge Shea's own witness, Circuit Judge Richard Payne, concurred. (T. 1555). Defense attorney Jason Smith believed that he was being threatened with sanctions for some unnamed and unspecified events in the future, and was fearful because of the Judge's order and threats of referring him to both The Florida Bar and the Supreme Court. (T. 204-05).

The Judge held another status conference on September 2, 1997, at which both sides expressed concern about the trial date. (T. 211-12). Judge Shea then denied a motion for continuance before it was even made. (T. 212).

The Judge's public pronouncements and interjection of himself into the proceedings prompted a defense motion to recuse him as of September 15, 1997, detailing all of the above. (T. 214). Judge Shea denied the motion on the next day, September 16, 1997. (T. 214-15).

On September 17, 1997, Judge Shea had a 21-minute phone call with Judge Schaeffer. According to Judge Schaeffer, during that phone conversation, Judge Shea told her there were "lies" in the motion to recuse, that he had denied the motion, but that he was concerned about recusal. (T. 303-04). Judge Shea then promptly prepared a long document entitled "Memorandum of Concern as to

Ineffective Assistance of Counsel and Order of Recusal," which he signed on September 19, 1997. (Pet. Ex. 11). Judge Shea now recused himself and took the occasion to criticize counsel. The order suggests in detail that the defense attorneys were ineffective for several reasons, despite the fact that the case had not yet been tried. (Pet. Ex. 11).

Judge Shea's Answer to Charge 16 claimed that he prepared this memorandum/ order on Judge Schaeffer's advice. (Answer to Formal Charges, 16). Judge Schaeffer disagreed, testifying before the Panel that it was "utterly impossible" for her to have given such advice. (T. 352). Judge Shea's Answer to charge 15 stated that he had continually consulted with Judge Schaeffer regarding the *Overton* matter. Judge Schaeffer stated this was "absolutely inaccurate." (T. 376-77). The Panel finds Judge Schaeffer to have been a very credible witness and when in conflict with Judge Shea, her testimony, as supported by the overall weight of the evidence, is accepted.

Judge Schaeffer reviewed the entire pleadings file in the *Overton* matter. She testified that as of September 19, 1997, substantive motions had been filed and that Judge Shea's use of a February date to measure the "effectiveness" of counsel, left seven months of activity unaccounted for. This was inexplicable, except as retaliation against a lawyer who had sought to recuse him. (T. 320-29; 372-73). Mr. Smith reasonably believed that this order was entered by Judge Shea to get back at him for filing a motion to recuse. (T. 221).

Judge Shea called Judge Richard Payne, the former Chief Judge of his Circuit, to testify on his behalf. Judge

Payne conceded that Judge Shea had violated the judicial canons with regard to his handling of the *Overton* case. (T. 1529; 1537; 1555-56).

Judge Shea's "memorandum order" regarding ineffective assistance of counsel was widely publicized. (T. 221-224). Defense counsel Jason Smith testified that after it was released to the press, he lost business because of it. He also stated, on a more personal level, "I felt like I was being attacked for no good reasons by a sitting judge in the case, and I still haven't figured out why it happened the way it did." (T. 224). The record amply reflects that Judge Shea intentionally drafted his "memorandum order" to portray defense counsel in the worst possible light in the public eye, and that Judge Shea's action, in fact, succeeded.

By his actions directed toward defense counsel, Judge Shea violated Canons 1, 2, and 3. The Judge placed personal animosity against counsel over the administration of justice. Obviously, a capital murder case cannot be legally tried with ineffective defense counsel. The order raised serious questions as to the future handling of the case which had not yet been tried. Judge Shea's supposed informal contacts with the Supreme Court and his assertions that the Supreme Court was already treating this case with special attention were totally improper. Judge Shea could give no reasonable explanation for sending his improper order directly to the Supreme Court.

Charge 17. **Threats Against Assistant State Attorney McClure Over an "Ex Parte" Violation**

Charge 20. **Misuse of Contempt Power – Mr. Brown and His Counsel**

Charges 32 & 33. **Further Threats – State Attorney Garcia**

17. On March 26, 1996, in open court in the case of *State of Del Puerto,* you accused Assistant State Attorney Gina McClure of unethical conduct for telephoning your judicial assistant to determine when jury selection would begin, implying that you would file a complaint against her with The Florida Bar.

20. On September 2, 1997, you entered an order in *Roof v. Brown,* suggesting that the attorneys for the respondent in this domestic violence case were encouraging their client to disobey your orders by filing motions for a stay. After finding the respondent to be in contempt, you immediately dismissed the case, and vacated the contempt order against the respondent.

32. In a letter dated March 18, 1996, you falsely accused Assistant State Attorney Luis Garcia of attempts to make *ex parte* contacts with you and threatened to report him to The Florida Bar.

33. On March, 19, 1996, in the case of In re *G.R.*, a juvenile matter, you improperly and falsely accused Mr. Garcia in open court of having stated that you had engaged in *ex parte* contact.

Findings:

These four charges all concern Judge Shea's consistent disagreements with the office and personnel of the State Attorney and others. The Panel concludes that, as he admitted concerning the Baptiste matter, Judge Shea was too "thin skinned" and reacted in his judicial role when he felt threatened.

Judge Shea retaliated against lawyers for perceived criticism. This conduct began early and continued until his suspension. In *State v. Davis*, Mr. Davis was charged with embezzling funds from the local fire department. Mike Strickland (a public defender) learned that Judge Shea, the presiding judge, was a member of a local fire department. He thus filed a motion to recuse on June 15, 1995. (T. 726-28; 1239-40; Pet. Ex. 27 and 28).

In response, in a detailed order, Judge Shea *granted* recusal but attacked Mr. Strickland. Quoting Rule 4.3.3 of the Rules of Professional Conduct, Judge Shea said that it "prohibit[ed] an attorney from knowingly making false statements of material fact or law to a tribunal." Although the foregoing facts were undisputed, the Judge found the motion to disqualify him to be "frivolous" and found the "procedure . . . to be offensive to the fair administration of justice, an abuse of legal process, and possibly violative of the Code of Professional Conduct." (T. 126-28; 1241-42; 1253-54).

Mr. Strickland was not permitted to defend himself before these findings were announced in the order, which also granted the requested recusal. (T. 1260-61). Mr. Strickland could not appeal the favorable ruling and was

left with a finding that he was guilty of unethical conduct, a permanent mark on his excellent record with the clear potential to adversely impact his future in business and the practice of law. (T. 1260-61). Despite this order, the Panel notes that Mr. Strickland appeared at the hearing as a witness for Judge Shea. (T. 1218).

Members of the State Attorney's office who filed motions to recuse Judge Shea or took other innocent actions received orders or treatment of a similar nature. (T. 1255). Judge Shea's attacks on counsel were not reserved solely to recusals. In *Roof v. Brown*, Mr. Brown did not appear for a domestic injunction hearing because he had no objection to the relief sought by petitioner. Judge Shea's order, however, added new measures the petitioner had not requested including requiring Brown to enroll in a Domestic Safety Program. Brown's counsel raised the lack of notice in a "Motion for Rehearing" and sought a hearing to bring the error to the court's attention. This motion was uncontested and unopposed. However, Judge Shea:

(1) refused to grant a hearing;

(2) canceled a hearing that Brown's counsel set;

(3) summarily denied the motion;

(4) issued an order to show cause why Brown should not be held in contempt based on a hearsay document;

(5) held Brown in contempt and refused to consider the evidence because it was "hearsay"; and

(6) castigated defense counsel who sought to rectify this situation, with a finding that their repetitious motions for stay encouraged Respondent to disobey this Court's order. (T. 389-401).

In *State v. Avins*, the defendant's privately retained counsel (Mr. Fenn) was detained in a Federal trial in Miami before the Honorable Lenore Nesbitt. (T. 162-63). He could not attend a docket sounding and asked attorney Karl Beckmeyer to attend in his stead. (T. 164). When Mr. Beckmeyer attended the docket sounding, Judge Shea "lost it." (T. 163). He was emotional and appeared not to listen. (T. 164). Without giving the attorney time to explain, Judge Shea announced that he was "removing Mr. Fenn as an attorney" for the defendant. (T. 164). Beckmeyer described the Judge's actions as "irrational, unfounded [and] completely baseless." (T. 164).

In the case of *State v. Gonzalez*, Assistant State Attorney (ASA) Gina McClure gave instructions to a police detective pursuant to Judge Shea's direction to limit his testimony to avoid any mention that the police had been engaged in a search for cocaine. (T. 613-14). The detective violated those instructions by disclosing the cocaine search, and thereby causing a mistrial. (T. 613-15). The defense then moved to dismiss the charge based on prosecutorial misconduct. (T. 615). Judge Shea made two public statements that ASA McClure had done nothing wrong. (T. 622; 625; 735). Judge Shea also told McClure and ASA Luis Garcia in an off-the-record sidebar that McClure had done nothing wrong. However, he said in that sidebar that "he had trouble with the Sheriff's office"

and this particular officer and that he wanted the office to understand this problem. (T. 625).

The order actually entered on the defense motion to dismiss was personally written by Judge Shea and was directly at odds with his public pronouncements. (T. 626). Judge Shea dismissed the case and found Ms. McClure guilty of intentional prosecutorial misconduct. (T. 626). Moreover, Judge Shea personally delivered the order to Luis Garcia, who was not counsel of record on this case. (T. 738). Judge Shea had a conversation with Garcia when visiting with him in Garcia's office. (T. 741-42). Mr. Garcia told the Judge that he was going to have to ask him to recuse himself in all cases involving the specific officer. Garcia asked, "How do you want me to handle this?" and Judge Shea told him to do it in writing. (T. 739-40).

Shortly after the order of dismissal for prosecutorial misconduct, the State Attorney Mr. Zuelch placed a call to Judge Shea who refused to take the call. (T. 2869-73). This became the basis for many arguments that the State Attorney was out to get Judge Shea because he had refused to take a call from Mr. Zuelch who was a powerful official. The Panel rejects this theory as not supported by the evidence.

On March 18, 1996, Judge Shea attacked Mr. Garcia in correspondence, accusing him of improper ex-parte communications, which arose from the prior conversation in Garcia's office which Judge Shea had initiated. (T. 735). Judge Shea perceived Garcia's request as personal criticism. (Resp. Ex. 238). Judge Shea wrote on March 18, 1998, that "Your implication to me that the Court engaged in improper conduct reflects a continuation of a pattern

of disrespect for the Court. . . . (Resp. Ex. 238). He added that:

> It is inappropriate and borders on the unethical for an attorney to directly criticize or complain to the Judge of his ruling outside of proper argument, with all parties present, or to tell the Judge "that's what the court of appeals are for", as you stated to me ex-parte at a side bar during other criminal proceedings (Resp. Ex. 238).

Judge Shea concluded this letter by severing contact with the State Attorney's office "due to your actions as set out in this letter" and warning Mr. Garcia that:

> The Code of Judicial Conduct has been recently amended to allow a Judge who may have knowledge of improper conduct of an attorney to bring this to the attorney's direct attention rather than filing a formal bar complaint. I have done this with both you and Mr. Zuelch, as well as a member of the Public Defender's office, when I felt it was appropriate. However, please be advised [that] any further misrepresentations made by you or your office toward this Court, any further violations of Rule 4-3.5 (b), or other conduct I determine to possibly constitute an ethical breach, shall immediately be filed with the [sic] Florida Bar in Miami for appropriate action. (Resp. Ex. 238).

Judge Shea circulated this accusatory letter to Garcia's superior, State Attorney Kirk Zuelch, the Public Defender, and the Honorable Richard Payne, then Chief Judge. (Resp. Ex. 238).

One week later, ASA Gina McClure phoned Judge Shea's Judicial Assistant to determine the proper date for

jury selection in another case because of an error in one of Judge Shea's orders. (T. 628). The error was undisputed, but Judge Shea overheard part of the phone conversation and took the position that McClure was attempting to *ex parte* him. (T. 629-639). He used the opportunity to attack ASA McClure in open court and again in writing warning that "the minute I have to file a bar complaint against any attorney for any reason, that attorney cannot appear in my courtroom . . . . " (T. 629-639; Resp. Ex. 163, p. 4).

This incident resulted in Judge Shea imposing an absolute prohibition as to supposed *"ex parte"* contacts. The Panel does not view a lawyer calling a judge's judicial assistant to check on an apparently erroneous date in an order as any sort of prohibited *ex parte* contact. Judge Shea should not have threatened ASA McClure with a "bar complaint" for her phone call. Judge Shea acted inconsistently. He found it proper to contact attorneys such as Beckmeyer and Mulick for his personal reasons and to discuss the Guidance Clinic with Dr. Rice, while at the same time accusing counsel of ethical violations for innocuous contacts with his office staff over scheduling matters.

In *State v. Hendricksen,* Judge Shea ordered the State Attorney to personally report to him why he was nolle prossing a case. (T. 747-51; Resp. Ex. 164 & 165). Judge Shea intended to punish the State Attorney's office for criticism which he alone perceived. Following the *Hendricksen* hearing, Judge Shea asked attorney Garcia to stay behind and told him that he, Garcia, had "started fabricating things since [the] Gonzalez [ruling] and that if

[Garcia] didn't straighten up he could make things hard for our office like this order [in Hendrickson]." (T. 752).

Judge Shea acted vindictively. At his 6(b) hearing on March 27, 1998, he attributed the charges against him to "fabrication" by the State Attorney's office. (Hearing p. 10). The Notice of Formal Charges.was subsequently filed May 1, 1997, and contained charges mentioning these Assistant State Attorneys by name.

On May 4, 1998, Judge Shea issued a press release, reiterating that he had "expected something like this" for three years from the State Attorney. (Shea Depo. Ex. 1). That same day, Luis Garcia filed a specific motion to recuse the Judge on all of the State's cases because of bias and prejudice. (T. 1395-99). The Judge denied the motion. (T. 1399).

In his treatment of counsel as detailed here, Judge Shea violated Canons 1, 2 and 3 of the Code of Judicial Conduct. His actions went beyond the mere appearance of impropriety and prejudice and reached the level of actual impropriety.

Charge 21. Hostility Toward Other Judges

Charge 22. Public Hostility Over Court Reporters

Charge 23. Private Hostility in Judge Meetings

Charge 26. Securing information on Pending Case

21. In or about Thanksgiving 1997, in open court you criticized your fellow judges, Chief Circuit Judge Taylor and Circuit Judge Wayne Miller, stating inter alia "those Key West judges do not know what they are

doing," and further evidencing disrespect for Judge Taylor with facial gestures. On other occasions you have criticized these judges and County Judge William R. Ptomey and County Judge Ruth Becker in open court. As to Judge Ptomey, you stated that he was not qualified and does not have your knowledge of the law.

22. In a memorandum to Chief Judge Sandra Taylor dated November 29, 1997, you falsely stated that you were not given appropriate notice that a matter involving court reporter services would be considered at the regular meeting of judges held on November 7, 1997. You improperly, for self-aggrandizement, sought to involve third parties in a internal dispute on a court administrative matter, by publicly disseminating your distorted version of events to a local bar association, and publicly continuing this dispute by sending a letter concerning the subject to the Clerk of the Supreme Court of Florida and the Chair of the Local Rules Advisory Committee, with a copy to the local bar association.

23. At a regular meeting of the judges of the circuit held on December 5, 1997, you verbally attacked Chief Judge Taylor and Judge Ptomey, denigrated Chief Judge Taylor, and stated that you had shared your negative opinions of the Monroe County judiciary with judges throughout Florida. You continued to act disrespectfully toward your colleagues, thereby disrupting the meeting and preventing a civil dialogue on the agenda. You then departed in a rude and belligerent manner prior to the conclusion of the meeting.

26. On August 14, 1995, you improperly sought *ex parte* to secure information about the case of *Hendrix v.*

Muller from a neighbor, one of the litigants, Deputy Clerk Leslie Inks.

Findings:

As to Charges 21 and 26, the Panel finds a lack of clear and convincing evidence and these charges are dismissed.

As to Charge 22, due to the lack of clear and convincing evidence, the Panel is unable to determine whether Judge Shea's statement in his memorandum to Chief Judge Sandra Taylor of November 19, 1997, that he had not been given appropriate notice that court reporter services would be considered at a regular meeting of judges held on November 7, 1997, was false. As to the balance of Charge No. 22, the Panel does find that Judge Shea involved third parties in an internal dispute on an administrative matter involving court reporters by publicly disseminating his version of the events in question to the local bar association and by sending a letter concerning the subject to the clerk of the Supreme Court and the Chair of the Local Rules Advisory Committee along with a further copy to the local bar association. (T. 1094-99).

Further as to Charge 22 and 23, the Panel concludes that Judge Shea verbally attacked Chief Judge Taylor and other judges at the December 5, 1997 meeting. While candid and even heated discussions are certainly appropriate in judges' meetings, Judge Shea's conduct was disrespectful of his colleagues, disrupted the meeting and actually prevented any meaningful dialogue on the court reporter plan in question. (T. 1005-1010). Judge Shea left

the meeting early in a belligerent manner. His conduct lessened respect for the judiciary and made it difficult for all members of the judiciary in the Circuit to perform their duties.

Charge 27. Disregard for Security and Keeping Firearms

27. You have ignored established court security procedures, for example by escorting an attorney in September 1997, into the branch courthouse without the required security clearance, by keeping firearms at your personal disposal, and threatening to pull these weapons on defendants.

Findings:

The Panel finds a lack of clear and convincing evidence and dismisses this charge.

Charge 28. Firearms

28. On or about February 7, 1996, without reason, you brandished * a loaded firearm in your chambers, claiming that you found that necessary because only one bailiff was present during a contempt hearing. On another occasion despite the presence of an armed bailiff you threatened to draw a firearm on a defendant who had begun to rise from a chair. *[The word "brandished" was stated by the prosecutor to have been used in error. (T.870-1). The word was amended to "threatened". (T.1237,1635).]

Findings:

The Panel finds a lack of clear and convincing evidence as to this firearms charge and dismisses same.

Charge 31. Breach of Confidence with the Chief Judge

31. You violated the confidence of Chief Judge Taylor by disclosing the contents of a confidential memorandum from her sent to you on or about August 25, 1997.

Findings:

The Panel concludes that Judge Shea is guilty of violating the confidence of Chief Judge Taylor by disclosing the contents of a confidential memorandum regarding court reporters. Judge Shea's explanation is that he did not realize the document was of a confidential nature. The Panel rejects this explanation and concludes that this extremely volatile issue resulted in Judge Taylor typing the memo personally which she then personally sent on to Judge Shea. (T. 1005-1010; 1103-4). Judge Shea's purposeful disclosure of this memo substantially lessened collegiality among the judges and diminished public confidence in the bench.

Charge 36. Threats of Attorney Fees Against the Clerk's Office

36. On June 12, 1997, you complained in writing to the Clerk of the Circuit Court Danny Kohlage regarding problems you were having with his deputies, stating without legal authority, "there appears to be a lack of

quality control throughout the Clerk's office, and if necessary, I am prepared to begin the assessment of attorney's fees against the Clerk's Office directly if there is any unnecessary fee or cost burden on litigants due to the problem." When a meeting was held regarding these accusations among you, Mr. Kohlage, and others on his staff, you were not able to cite a specific instance of conduct sustaining your accusations.

Findings:

The Panel concludes that Judge Shea's threats to the clerk's office in fact occurred and were a further outgrowth of Judge Shea's overall announced animosity against the office of the clerk. Even if Judge Shea believed there was a "lack of quality control" in the clerk's office, it was his duty as a judge to seek to remedy these problems in a constructive and positive manner. The Panel finds that he did not make such efforts and, in fact, chose instead to act in a destructive manner.

The Law Regarding Appropriate Remedies

Having concluded that Judge Shea is guilty, the Panel considers the available remedies. Fla. Const. Art. V, Section 12 (a) (1) authorizes the Commission to recommend to the Supreme Court the removal from office of any judge, whose conduct during term of office or otherwise "demonstrates a present unfitness to hold office. . . . " The Commission is also empowered to recommend judicial discipline, defined as "reprimand, fine, suspension

with or without pay, or lawyer discipline." On recommendation of the Investigative Panel, the Supreme Court suspended Judge Shea in its Order dated May 9, 1998.

To impose any degree of discipline against a judge, the evidence regarding the charges against him must be clear and convincing. *Inquiry Concerning Judge Davey, supra; Inquiry Concerning Judge Graziano, supra* and *In re LaMotte*, 341 So. 2d 513 (Fla. 1977). The object of these disciplinary proceedings is "not to inflict punishment, but to determine whether one who exercises judicial power is unfit to hold a judgeship." *In re Kelly*, 238 So. 2d 565, 569 (Fla. 1970), *cert. den.*, 401 U.S. 962, 91 S.Ct. 970, 28 L.Ed.2d 246 (1971).

Removal from judicial office is reserved for cases involving the most egregious misconduct, as this Court will not lightly remove a sitting judge from office. See *In re Berkowitz*, 522 So. 2d 843 (Fla. 1988); *In re Kelly*, 238 So. 2d 565 (Fla. 1970), *cert. den.*, 401 U.S. 962, 91 S.Ct. 970, 28 L.Ed.2d 246 (1971).

In determining whether a judge conducted himself in a manner which erodes public confidence in the judiciary, this Commission must consider the acts or wrongs themselves and not the actual resulting publicity surrounding those acts. If a judge commits a wrong which would erode confidence in the judiciary, but it does not appear that the public has learned of it or has actually lost such confidence, "the judge should nevertheless be removed." *In re LaMotte*, 341 So. 2d 513 (Fla. 1977). Thus, even though the public would not have been aware of much of the internal conflict created by Judge Shea but for these proceedings, that is not a defense. Moreover, conduct

unbecoming a member of the judiciary may be proved by evidence of major incidents, or by evidence "of an accumulation of small and ostensibly innocuous incidents which, when considered together, emerge as a pattern of hostile conduct, unbecoming a member of the judiciary." *In re Kelly*, 238 So. 2d at 566. Both are present here. We find an unfortunate pattern of vindictiveness.

Charge 1, standing alone, is sufficient to warrant Judge Shea's removal from office. Judge Shea used the power of his office and verbal threats to force a law firm to withdraw from the representation of its client. Judge Shea's threatened recusal on *all* of the firm's cases was specifically intended to deter and did, in fact, deter the law firm's representation. Judge Shea specifically warned the firm that his potential recusal would adversely affect the firm economically, as well as its clients, and as a result, the firm was forced to abandon its client against its will. Judge Shea also mentioned a sum of money he sought for his mobile homes, which would result in withdrawal of his threatened blanket recusal. Clearly, Judge Shea was acting with his personal financial interests in mind.

Interestingly enough, while continually denying any violation of the Code of Judicial Conduct, Jude Shea eventually stated: "And so I realize now I wish I never would have done that. I shouldn't have done it that way." (T. 2906).

A judgeship is a position of trust not a fiefdom. *In re Graham*, 620 So. 2d 1273, 1275 (Fla. 1993). Attorneys and others should not be made to feel that the disparity of power between themselves and the judge jeopardizes

their right to justice. *Graham* at 1275. While the power of contempt is an extremely important power for the judiciary, it is nevertheless an awesome power and one that must not be abused. It is critical that the contempt power should "never be used by a judge in a fit of anger, in an arbitrary manner, or for the judge's own sense of justice." *In re Perry*, 641 So. 2d 366, 368 (Fla. 1994). Judge Shea was in office just over three years and his frequent resort to threats of contempt and to ethical referrals to The Florida Bar are a very poor commentary on his judicial temperament.

Judge Shea used the full power of his office as a bully pulpit to punish his perceived enemies. These "enemies" included individuals such as Ms. Baptiste and others whom he perceived to have voiced criticism of him.

As in *Graham*, Judge Shea has spent the bulk of his defense concentrating on the perceived misdeeds and inadequacies of others. *Graham* at 1275, indicates such a defense is irrelevant:

> Regardless of whether his criticisms of these individuals and institutions are well-founded, they are not relevant to our determination of his ability to administer justice fairly and professionally.

One of the more disturbing elements of this case is Judge Shea's preoccupation with his "enemies," real or imagined. One of his first acts of office was to have his chambers swept for electronic eavesdropping equipment. When no such equipment was uncovered, Judge Shea

nevertheless persisted in accusing a host of different persons of bugging his chambers. These included predecessor Judge Overby, his colleague at the Plantation Key courthouse Judge Reagan Ptomey, the State Attorney's office and the Sheriff's Department. Judge Shea's willingness to take offense where none was suggested, to find hidden negative meanings in completely benign remarks, take drastic actions based upon his perceptions, his hidden agendas and use of power to "send messages" rather than administer justice, and his disregard of rudimentary notions of fairness and due process, all render him presently unfit to serve in his position as a circuit court judge.

This Commission has not hesitated to recommend removal in less egregious cases. See *In re Crowell*, 379 So. 2d 107 (Fla. 1979) (judge removed from office "substantially due to his tendencies to lose his temper when confronted by the human failings and shortcomings of others . . . [showing] a pattern of conduct over a long period of time, involving persistent abuse of the contempt power, which demonstrate[d] a lack of proper judicial temperament and a tendency to abuse the power of his office."); *In re Graham*, 620 So. 2d at 1275 (using power in the "zealous pursuit of a pure society" with motives which were acceptable, but methods which were not).

Removal is warranted, moreover, in that Judge Shea simply fails to recognize any error in his actions or their impact on others around him. Since the date he was formally charged, Judge Shea has persisted in his efforts to place everyone but himself on trial.

A judge who refuses to recognize his own transgressions is doomed to repeat them and "does not deserve the

authority or command the respect necessary to judge the transgressions of others." *In re Graham*, 620 So. 2d at 1276; *In re Graziano*, 696 So. 2d 744, 753 (Fla. 1997). As Judge Shea's testimony reflects, this is true here:

> Q. [I]s there one charge that you think you did anything wrong on, one?
>
> A. I do not feel that I violated the Code of Judicial Conduct on any of these charges. I do feel that, in the ballpark of judicial conduct, that some of the conduct could have actually been better done, as I get more experienced and I learn more, and I think I have learned and become more experienced.
>
> And so within the ballpark of proper judicial conduct, sure, there's better ways to do things. As to whether or not I crossed the line and violated the Code of Judicial Conduct in any way, I have already denied that in my answer, and I stick to that denial.
>
> * * *
>
> Q. You think you've done you haven't even stepped borderline to improper conduct on any of these 37 charges.
>
> A. If you're defining improper conduct as being a violation of the Code of Judicial Conduct, I've already denied any violation of the Code of Judicial Conduct and I stand by that.
>
> As to whether or not I can improve on certain of my judicial actions and judgments and rulings and decisions and the way I run my court, and the way I administratively handle the clerks and bailiff, I probably could improve in that area. As to whether I violated the Code, I don't think so. (Depo. pp. 439-41).

The six prefatory charges are well supported by the various examples charged in the more specific allegations on which Judge Shea has been found guilty. Although at least one circuit judge testified to actual physical fear of Judge Shea, the Panel concludes that the evidence as to physical misconduct is not clear and thus no finding is made as to any physical conduct.

As to all other elements of the six prefatory charges, the Panel concludes that Judge Shea is indeed guilty. The persons who were the subject of Judge Shea's pattern of abuse and vindictiveness included fellow judges, attorneys, courthouse personnel, the Sheriff's Department, court reporters, court clerks, bailiffs, victim coordinators, judicial assistants, the Guidance Clinic of the Upper Keys and the Domestic Abuse Shelter. Although it is not specifically charged, the Office of the State Attorney was also the subject of Judge Shea's abusive tactics but the result would be the same without this fact.

Recommendation

After consideration of all the evidence and based on the clear and convincing standard, the Hearing Panel recommends that Judge Shea be found guilty and permanently removed from office by this Court.

The Panel has considered a possible recommendation regarding "lawyer discipline" under Article V, § 12(a)(1) in the event that Judge Shea is removed from office and attempts to return to active practice as a member of The Florida Bar. The Panel declines to make any recommendation concerning "lawyer discipline."

The Panel further recommends and requests the imposition of all costs including attorneys' fees and other expenses involved in the investigation and prosecution of the case. These costs are sought pursuant to two subsections of the Florida Constitution. Article V, § 12 (c) (2) of the Constitution provides "The supreme court may award costs to the prevailing party." and Article V, § 12 (f) (2) j provides "The commission shall be entitled to recover the costs of investigation and prosecution, in addition to any penalty levied by the supreme court." Attorney's fees are properly a cost of the prosecution. In addition, Judge Shea's litigation tactics were often responsible for many extra hours of legal work by counsel. This matter should be remanded for determination of the amount of all costs after the Court's final decision on removal and the completion of counsel's services.

As to the issues of sanctions and bad faith litigation, the Panel denies all of Judge Shea's motions for attorney's fees and sanctions. The several motions for sanctions and attorney's fees by the prosecution are granted. Judge Shea is found to have abused the discovery process. The Panel does not deem it necessary to detail the specific steps in this litigation warranting the imposition of sanctions because the same costs and attorneys' fees (including all special counsel fees) should be borne by Judge Shea under the normal "costs" provisions of the Constitution quoted above. It is not necessary to sanction Judge Shea by imposition of costs he will be otherwise ordered to pay and the Panel does not recommend a sanction beyond the "costs" already required by Article V, § 12 (f)(2)j of the Constitution. If the Court were to conclude that attorneys' fees are not properly within the

"costs of investigation and prosecution" under § 12(f)(2)j, then the Panel requests that the matter be remanded for further consideration and argument followed by a more detailed order imposing some or all of these amounts as appropriate sanctions.

March 19, 1999.

FLORIDA JUDICIAL
QUALIFICATIONS
COMMISSION

BY: /s/ Frank N. Kaney
JUDGE FRANK N.
KANEY, As Chair of
The Hearing Panel,
Florida Judicial
Qualifications
Commission Room 102,
The Historic Capitol
Tallahassee, Florida
32399-6000
850/488-1581

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished via Federal Express to **JAMES S. MATTSON, JAMES WATTIGNY,** Mattson & Tobin, LLP, 88101 Overseas Highway, Islamorada, Florida 33037; and **LAURI WALDMAN ROSS**, Ross & Tilghman, Two Datran Center, Suite 1705, 9130 S. Dadeland Blvd., Miami, Florida 33156-7818, this 19th day of March, 1999.

/s/ Frank N. Kaney
JUDGE FRANK N. KANEY

APPENDIX 3

Supreme Court of Florida

THURSDAY, MAY 25, 2000

INQUIRY CONCERNING	*	
A JUDGE, NO. 97-376	*	CASE NO. SC92913
RE: STEVEN P. SHEA	*	

****

The Motion for Rehearing filed by Respondent, having been considered in light of the revised opinion, is hereby denied.

HARDING, C.J., and SHAW, WELLS, PARIENTE, LEWIS and QUINCE, JJ., concur.

ANSTEAD, J., recused.

A True Copy
TEST:

/s/ Thomas D. Hall
Thomas D. Hall
Clerk, Supreme Court

BHP

cc: Hon. Frank N. Kaney
Thomas C. MacDonald, Jr.
John R. Beranek
Lauri Waldman Ross
Eileen L. Tilghman
Arthur J. England, Jr.
Paul R. Lipton
Benjamin L. Reiss
James Wattigny

APPENDIX 4

Supreme Court of Florida

FRIDAY, MAY 26, 2000

CASE NO.: SC92913
Lower Tribunal No.: 97-376

INQUIRY CONCERNING A JUDGE, NO. 97-376 RE: STEVEN P. SHEA

Steven P. Shea's Motion for Stay of Mandate Pending Certiorari is hereby granted and proceedings in this Court are hereby stayed to and including June 26, 2000 to allow Steven P. Shea to seek review in the Supreme Court of the United States and obtain any further stay from that court.

A True Copy
Test:

/s/ Thomas D. Hall (SEAL)
Thomas D. Hall
Clerk, Supreme Court

dy
Served:

JAMES S. MATTSON
LAURI B. WALDMAN
EILEEN L. TILGHMAN
HON. STEPHEN P. SHEA, JUDGE
MAURICE JAY KUTNER
SAM DANON
DANIEL S. PEARSON
JAMES WATTIGNY
LARRY ERSKINE
JOHN BERANEK
THOMAS C. MACDONALD, JR.
DAVID J. AUDLIN, JR.
PAUL R. LIPTON
DANIEL GELBER
BENJAMIN L. REISS
ARTHUR J. ENGLAND, JR.
JOHN A. REED, JR.

APPENDIX 5

IN THE SUPREME COURT
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE	)	
RE: STEVEN P. SHEA	)	CASE NO. 92,913

MOTION TO VACATE PANEL'S SANCTIONS AND AWARD OF ATTORNEY'S FEES AGAINST JUDGE SHEA
and
MOTION FOR PREVAILING PARTY COSTS TO JUDGE SHEA

Circuit Judge Steven Shea files this response to the award of sanctions and attorney's fees against him for abuse of the discovery process, as recited on page 66 of the Commission's Findings, Conclusions and Recommendations ("the FC&R"), and respectfully moves for an award of costs pursuant to the "prevailing party" provision contained Article V, section 12(c)(2) of the Florida Constitution.

MOTION TO VACATE SANCTIONS AND AWARD OF ATTORNEY'S FEES AGAINST JUDGE SHEA

The Commission has denied all motions for fees and sanctions requested by Judge Shea in connection with the conduct of the Commission's proceeding, without any hearing, but has awarded itself attorney's fees and sanctions for an undefined abuse of the discovery process.

(FC&R at 66). The Panel's FC&R states that it is unnecessary "to detail the specific steps in this litigation warranting the imposition of sanctions," on the rationale that the same sums "should be borne by Judge Shea under the normal 'costs' provisions of the Constitution," found in Article V, sections 12(c)(2) and 12(f)(2)j. *Id.*

It is extremely difficult for Judge Shea to respond to the Panel's grant of unidentified motions for sanctions, as there is no indication of any particular act on behalf of Judge Shea which would constitute an abuse of the discovery process. Any sanction for abuse of the discovery process would have to be based on an evidentiary evaluation of events in the course of the litigation, but the Panel held no hearing on any of the prosecutor's motions. In any event, sanctions may not be awarded for discovery abuses under the provisions of the Constitution on which the Panel relied, as they provide authorization only for the recovery of the "costs" of prosecution.

The Court should vacate the Panel's award of fees and sanctions. The starting point for analysis is an overview of the Commission's process and proceedings.

1. Overview of the Commission proceeding.

The Judicial Qualifications Commission launched an investigation into the conduct of Judge Shea which was based on 55 separate complaints. As was his absolute right, Judge Shea engaged counsel to defend his elected judicial position and his reputation. His defense began with an effort to cull out irrelevant matters and unprovable charges. That effort was signally successful, as the investigatory process ended with a Notice of Formal

Charges containing only 33 charges from the original 55 complaints, later amended to add another 4. (FC&R 3). The elimination of 18 out of 55 charges, over 30% of those originally investigated, proved the merit of the initial efforts put into Judge Shea's defense.

Judge Shea continued his defense before a hearing panel chaired by Judge Frank Kaney ("the Panel"). This entailed sitting for more than 20 hours of personal deposition testimony, and then testifying live to defend against the 37 specific charges and another group of nonspecific "prefatory" charges. On his behalf, his counsel filed motions to dismiss and motions for summary judgment along with memoranda, prepared and filed affidavits and other materials, and adduced testimony to the limited extent which the Panel allowed witnesses to appear.[1] The defense also included a motion to disqualify Judge Kaney, based on affidavits which established among other things his *ex parte* discussions of the subject matter of the charges with a judicial colleague who was a witness against Judge Shea. (R. 7). The defense motion to disqualify was denied by the Panel chairman without a hearing, and when it was later referred for full Panel

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[1] Scores of lawyers, court personnel and citizens of the Upper Keys were prepared to refute the Commission's general prefatory charges and to testify in support of Judge Shea's character and bench competence, but the Panel barred testimony from all but three. (T. 2293). Evidence of Judge Shea's bench competence was systematically curtailed by rulings of the Panel chairman. *See e.g.*, T. 1846, 2110.

consideration it was again denied without a hearing.[2] (R. 55a, 196).

Over the course of several days, the prosecutor was given free rein to make her case against Judge Shea to the Panel. At the end of her presentation, she announced that the Panel should not take into account 12 of the 37 pending charges against Judge Shea – almost a third of the charges which Judge Shea had been forced to defend – because she had "presented no evidence." (T. 166). At that juncture, Judge Shea had slogged through discovery, and provided motions, memoranda and testimony in defense of *over half* of the original complaints against him which so lacked substance and merit that neither the investigating panel nor the prosecutor herself deemed them sufficient for consideration by the hearing panel. Judge Shea was foreclosed from even *attempting* to limit the proceedings even further by an announcement from the Panel chairman that any motion that he might make at that point in the hearing was preemptively "denied." (T. 1166).

Judge Shea then presented his defense case, to the extent the Panel allowed him to do so. When all the evidence was in and the Panel received written closing memoranda from both sides, the prosecutor abandoned yet one more of the 37 charges, simply by making no reference to or argument concerning charge number 19.

---

[2] The significance of the chairman's and the Panel's denials without a hearing lies in the fact that one of the charges brought against Judge Shea is premised in part on his having denied a motion to recuse himself from a case *without a hearing*. (FC&R at 42).

Thus, the Panel concluded its hearing with 24 charges to consider, not the original 37.

Eventually, the Panel issued its report – the FC&R which is now before the Court – concluding that another 6 charges against Judge Shea lacked evidentiary support and were dismissed - one-quarter of those available for its consideration after the prosecutor herself had winnowed out a third of those she originally required Judge Shea to defend.[3] Put in the context of the efforts of defense counsel through the course of the proceeding, it is seen that Judge Shea ***successfully*** defended 37 of 55 original complaints, and 19 of 37 formal charges which were brought against him. In Judge Shea's initial brief on the merits, the Court will find compelling arguments based on the record evidence that none of the 18 surviving charges against him should be sustained, either because they are not supported by clear and convincing evidence or are contrary to the Code of Judicial Conduct and established law.

The value of defense efforts, contrasted with prosecutorial efforts, go beyond mere numerical superiority. Gone from the charges against Judge Shea are all of the headline-grabbing charges which had sensationalized the proceeding and irresponsibly defamed Judge Shea – wife-beating (Shea depo. at 245; R. 45, 54); gun brandishing (R 1, charge 28; T. 821); picking up prostitutes (Shea depo. at 443); fishing with drug dealers (R. 1, charge 29); sexual harassment of a clerk (R. 1, charge 7); publicly criticizing

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[3] The prosecutor participated both in the investigative phase and before the hearing panel. (R. 1).

judges in open court. (R. 1, charge 21). Absent from the charges against Judge Shea is any criticism of his bench conduct. Yet the Panel now seeks to impose on Judge Shea all of the attorney's fees run up by the prosecutor in his highly successful and essential defense. It should be obvious to the Court that any abuse of discovery by counsel in this litigation was not from Judge Shea.

2. Argument in support of motion to vacate sanctions and fees.

The power of prosecution carries with it the responsibility to act responsibly. A judge charged with being unfit to remain in office is faced with the formidable might and weight of a constitutional body of the state seeking to destroy a professional career and a reputation for integrity. Although a Judicial Qualification Commission proceeding is not a criminal proceeding in the formal sense, the prosecutorial advantages favoring the Commission are comparable to those of the state in criminal proceedings, and equally subject to abuse.

The Commission has constitutional authority, unlimited time, unrestrained resources, a wide-sweeping mandate to investigate both the public and the private life of any judicial official, and the unique procedural posture of being able to adopt findings and recommendations which are reviewable by only one appellate tribunal which, in recognition of institutional limitations, has said that findings and recommendations from the Commission are given great weight. For the most part, the Court declines to pass on the credibility of witnesses. *In re Kelly*, 238 So. 2d 565 (Fla. 1970), *cert. denied*, 401 U.S. 962 (1971); *In re*

LaMotte, 341 So. 2d 513 (Fla. 1977).[4] The Court is not hidebound in that regard, however, and carefully determines on its own from the record whether findings of the Commission are actually grounded in the record facts, and whether conclusions reached by the Commission are in fact supported in the record. *See In re Davey*, 645 So. 2d 398, 407 (Fla. 1994).

The Commission's constitutional mandate to investigate and prosecute errant judges is admittedly essential to preserve the public's faith in the judicial branch of government. In light of the truly awesome powers which the Commission can bring to bear on any individual judicial officer, however, and in recognition of the Commission's combined roles of investigator, prosecutor ***and*** fact-finder, the Court has in reality balanced its legitimate interest in preserving the integrity and high standards of the judiciary with a sensitive, if not heightened concern for those judicial officials who the Commission has chosen to target.

Two issues are presented by the Panel's award of attorney's fees to itself for the efforts of the prosecutor. The first is whether there has been an abuse of discretion in granting prosecution motions, based on the nature and extent of any alleged discovery abuses for which sanctions were sought. The second is whether attorney's fees are recoverable at all on the authority that the Panel has

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[4] For the Court's convenience, citations to its decisions in Judicial Qualification Commission proceedings are abbreviated to identify only the name of the respondent, in the manner shown.

claimed to rest its grant of fees – provisions in section 12 of Article V of the Constitution.

a. No abuse of discovery.

Defense efforts and tactics in this case were entirely warranted. This proceeding has proved the adage, paraphrased, that no judge's life or property is safe while the Commission is in session. The Commission's pursuit of irresponsible complaints, and its formal filing of unprovable charges against Judge Shea, set in motion a principle which Newton introduced into the vocabulary – that for every action there is an equal and opposite reaction. Zealous prosecutorial activity against Judge Shea personally and professionally fully justified his adoption of an equally zealous defense.

An obvious way to judge the necessity and validity of the defense reaction to the prosecution's action is to measure the success of one against the success of the other. In that regard, the results speak for themselves – Judge Shea's counsel have already successfully defended him from *two-thirds* of the matters for which he was called to account. When the final tally is made, Judge Shea is confident that the success ratio will be considerably higher.

A more detailed way to judge the Panel's grant of sanctions is to identify and evaluate specific discovery abuses which were claimed by the prosecutor, as found in the record of the proceeding. That approach is hampered by the Panel's post-proceeding, blanket grant of motions, however, with no identification of the alleged discovery abuses or their bearing on the proceeding. Judge Shea is

left to speculate on what prompted the Panel to impose *full fees as a sanction* for discovery abuses. On the best information available from the record, however, it appears that the prosecutor had filed only three requests for the imposition of sanctions.[5] A review of those requests, and the inconsequential nature of the matters of which the prosecution complained, provide no basis for the sanction which the Panel imposed.

Discovery sanctions are reviewed by the appellate courts not only to determine whether a discovery abuse in fact occurred, but to assure that any sanction is not out of proportion to the gravity of the alleged abuse and the harm actually caused. *Kelley v. Schmidt*, 613 So. 2d 918, 920 (Fla. 5th DCA 1993) ("[r]ather than using the scalpel, the trial judge has chosen the atomic bomb"); *Insua v. World Wide Air, Inc.*, 582 So. 2d 102 (Fla. 2d DCA 1991). In this case, the sanction imposed by the Panel is wildly out of proportion to the claimed abuses and the harm caused.

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[5] The record contains a "Partial FC&R on Special Counsel's Motion to Sanction the Respondent Judge for Bad Faith Litigation Practices," ordering more complete answers to one interrogatory presented by the prosecutor and holding in abeyance any ruling on the motion for sanctions. (R. 201). This order was entered without a hearing on the motion. There is no suggestion in the record that Judge Shea did not comply with the order and timely provide answers satisfactory to the prosecutor. The nature of this discovery dispute would not warrant sanctions in any event, for it stems from Judge Shea's filing of a witness list with 225 names in exactly the same manner that Special Counsel had filed her list of 55-60 witnesses: that is, without any identification of the substance of the proposed testimony.

A first motion sought to impose sanctions for evasive answers by Judge Shea during the second of the four depositions to which he was subjected, and the improper termination of that deposition by his counsel. (R. 101). Defense counsel had previously filed motions, pending at the time of this deposition, seeking protective orders to preclude improper inquiries by the prosecutor. A review of the transcript of the deposition will reveal that the prosecutor repetitively pursued matters which had never been charged – matters entirely beyond the scope of the authorized proceedings – and that Judge Shea's counsel had cautioned the prosecutor that Judge Shea was not obliged to sit for protracted inquiries in irrelevant, uncharged matters. After approximately four hours of testimony, Judge Shea's counsel terminated the deposition.

Judge Shea's conduct in the course of that deposition was demonstrably not sanctionable. Moreover, no harm resulted. The prosecutor again took Judge Shea's deposition on two subsequent occasions, requiring him to provide a total of more than 20 hours of deposition testimony. A fair evaluation of those 20 hours of testimony will show that nothing relevant to the proceeding was evaded or concealed, and that Judge Shea was in fact cooperative despite questions which were highly insulting and unrelated to any charge in the proceeding, such as "Have you ever domestically abused your first wife?" (T. 245) and "Did you beat your wife?" (T. 248). A review of the deposition testimony will reveal that the length of depositions, and the difficulty in satisfying the prosecutor with answers to her questions, was largely attributable to the prosecutor's lack of focus and redundancies. To

the extent that the Panel imposed sanctions based on the motion in connection with Judge Shea's second deposition, the Panel abused its discretion.

A so-called "Supplement" to the motion for sanctions alleged "bad faith litigation tactics" in the cancellation of a scheduled deposition of a Commission witness one day before it was scheduled to be taken at Plantation Key, resulting in the witness having driven unnecessarily from her home in Lakeland to Plantation Key. (R. Ex. 194). Here, too, the Panel abused its discretion. In large part that abuse comes from ignorance of the event, for the Panel failed to inquire into or note the circumstances that led to the cancellation of this deposition.

This witness had previously been scheduled by Judge Shea's counsel, by the consent of all parties, for a deposition in Lakeland where she resided. Judge Shea's counsel came to the deposition site at the appointed date and time, but neither the witness nor the prosecutor showed up. A re-scheduling of her deposition in Plantation Key was then made by the prosecutor, not by defense counsel. This deposition was indeed canceled by Judge Shea's counsel, one day before it was to be held, based on valid reasons and exigent circumstances which the Panel never had occasion to learn. Had a hearing been sought or held, the motion would have been denied summarily in light of the circumstances.

In any event, this event could not legitimately be the basis of a fee's sanction in the amount and to the extent that the Panel has awarded. The prosecution witness may have experienced inconvenience, but there is no claim whatever that the prosecutor suffered any cost, time or

inconvenience from the cancellation of this deposition. The inconvenience to a deponent hardly warrants the Panel's directive that Judge Shea should reimburse the Commission for all of the attorney's fees generated by the prosecutor in the entire case. Here, as well, the Panel's basis for a sanction constitutes an abuse of discretion.

A "Second Supplement" to the prosecutor's motion again alleges "bad faith litigation tactics" in the cancellation of a *telephonic* deposition one half hour before it was scheduled to be held, with an alleged consequence that the prosecutor was already en route to the deponent's office. (R. Ex. 206). Had the Panel held a hearing on this motion, it would have learned that the office of the prosecutor is in the Datran Center in Miami, 20 minutes from the deponent's downtown Miami office where the deposition was to take place, and that Judge Shea's counsel had good cause for the cancellation. The belated cancellation of this deposition at best caused minor inconvenience to the prosecutor. In any ordinary case, this inconvenience would have been evaluated in light of the conduct of both parties, and at most an adverse finding against Judge Shea would have resulted in a directive for payment of the cost of prosecutor's loss of travel time – perhaps one hour.

In sum, the award of *any* fees against Judge Shea as a sanction for a last-minute cancellation of two depositions constitutes an abuse of discretion in a proceeding that required Herculean efforts to counter the zealous over-prosecution of complaints and charges brought against Judge Shea. Decisions regarding the scheduling and cancellation of depositions for prosecution witnesses, in any event, are decisions made by counsel and not the client.

(*See* T. 880). The Panel's response to its prosecutor's plea for attorney's fees – a request to saddle Judge Shea with all of the attorney's fees run up by the prosecutor – is grossly out of proportion to any discovery difficulty this record reflects.

b. The constitutional term "costs" does not encompass attorney's fees.

Section 12(f)(2)j of Article V authorizes the Commission to recover "the costs of investigation and prosecution," and section 12(c)(2) permits the Court to award "costs" to the prevailing party. Neither provision supports the Panel's claim to attorney's fees, whether as a direct award or as a sanction. The Panel has cited no authority for claiming that the term "costs" includes attorney's fees, and all applicable authority contradicts any such construction of that term.

The starting point for analysis, as the prosecution itself pointed out in a response to a motion filed by Judge Shea for sanctions against the prosecution (R. Ex. 112), is the plain language of the Constitution.

> The constitution should be read with the sense that appears on its surface, not that one thing is stated but another meant, but that the very thing is meant which is stated . . . . [T]he profession seems to have lost the ability to understand or believe that a plainly written statement may have been truly intended to, and does, mean exactly what it states – no more and no less.

Wadsworth v. First Union Nat'l Bank of Florida, 564 So. 2d 634, 639 (Fla. 5th DCA 1990) (Cowart, J., dissenting).

To the best of the knowledge of Judge Shea's counsel after diligent research on the question, the Court has never construed these "costs" provisions of the Constitution to include attorney's fees. "Costs" have been held to mean just what the word connotes, and "costs" traditionally do ***not*** encompass attorney's fees. *See*, for example, *In re Hapner*, 718 So. 2d 785, 788 (Fla. 1998). In a similar context, where disciplinary charges have been lodged against lawyers under a rule which allows the taxation of the costs of investigation and prosecution,[6] the Court has awarded the traditional form of "costs" but has never included attorney's fees. E.g., *The Florida Bar v. Schultz*, 712 So. 2d 386, 389 (Fla. 1998); *The Florida Bar v. Rubin*, 709 So. 2d 1361, 1364 (Fla. 1998); *The Florida Bar v. Grief*, 701 So. 2d 555, 557 (Fla. 1997); *The Florida Bar v. Neely*, 675 So. 2d 592, 593 (Fla. 1996).

An award of attorney's fees, other than as a direct sanction for misconduct which has caused an opposing party to incur fees unduly, requires express authorization. A directive for the taxation of "costs" such as that found in the Constitution is not an authorization for an award of fees. *Cf. Goldberg v. Dade County*, 378 So. 2d 1242 (Fla. 3d DCA 1979), *dismissed*, 389 So. 2d 1110 (Fla. 1980) (attorney's fees not recoverable in criminal proceeding where statute authorizes an acquitted defendant to recover "taxable costs"); *Smith v. State*, 606 So. 2d 427 (Fla. 1st DCA 1992), *review denied*, 618 So. 2d 211 (Fla. 1993) (state not entitled to attorney's fees from convicted defendant under statute authorizing the recovery of "costs of prosecution, including investigative costs"). The

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[6] *See* R. Regulating Fla. Bar 3-7.6(o) and 3-7.7(c)(6).

Panel cannot plausibly justify an award of attorney's fees on the basis of constitutional provisions which authorize the Commission to recover "costs," yet that appears to be precisely the basis for the Panel's award.

As discussed above, no attorney's fee award is justified as a sanction for discovery abuses by Judge Shea's counsel. There appears to be a distinct element of vindictiveness in the Panel's award against Judge Shea. Having embarrassed him publicly, and irresponsibility, with spurious charges; having held him up to opprobrium in his community through an airing of charges more than a majority of which have either been dropped by the prosecutor or dismissed by the Panel; having caused him to be summarily suspended from office based largely on charges which the Panel no longer claims to support; and having recommended to the Court that he be permanently stripped of his office for acts which Judge Shea will show reflect good judgment in pursuit of better court administration in the Upper Keys; the Panel now seeks to inflict financial punishment beyond the sums he has already endured and outside the bounds of the constitutional provisions on which the Panel purports to rely.

It is hard to explain the Panel's fee award on any basis other than vindictiveness – the very charge which it sought to attribute to Judge Shea in his pursuit of a better judicial environment in the Upper Keys. In a circumstance not wholly unlike this one, the Court has held that another disciplinary agency, The Florida Bar, should be required to bear the cost of its over-prosecution.

> The Florida Bar "took an excessively broad approach to this case and failed to early abandon counts that could not be proved. For this

> reason we find it inequitable to impose all costs of these proceedings upon [the respondent].

The Florida Bar v. McCain, 361 So. 2d 700, 707 (Fla. 1978).

3. Conclusion.

In awarding fees to itself and imposing sanctions against Judge Shea, the Panel both lacked constitutional authority and abused its discretion. The imposition of sanctions and the award of fees against Judge Shea should be vacated.

Motion for Prevailing Party Costs To Judge Shea

Section 12(c)(2) of the Constitution allows an award of costs to the "prevailing party." Judge Shea is entitled to costs from the Commission both for the matters on which he has already prevailed – a predominant number of the charges initially brought by the Commission – and for any additional charges brought to the Court which it declines to sustain.

There are no decisions which specifically construe the "prevailing party" provision of the Constitution, but a useful analog is found in general case law on the entitlement to attorney's fees for a prevailing party. One such case is *Moritz v. Hoyt Enterprises, Inc.*, 604 So. 2d 807 (Fla. 1992), where the Court held that the prevailing party for an award of attorney's fees should be "the party prevailing on the significant issues in the litigation." 604 So. 2d at 809-10. In *Moritz*, the Court held that the "fairest test" to determine who has prevailed is to have that determination made by the lower tribunal from the record. The

Panel here, however, is certainly not the appropriate tribunal to determine whether, in the final analysis, Judge Shea or the Commission has prevailed on the significant issues in the case. The Court itself is in the best position to make that determination, after it has rendered its decision.

Judge Shea suggests that he has already prevailed on the preponderance of issues by which the Commission sought to charge him with judicial misconduct. If, at the end of the day he is exonerated from all charges, or if a determination is made that he should *not* be removed from office, then he will have prevailed predominantly in this most exasperating challenge to his job and his character. These facts fully warrant a determination that Judge Shea is entitled to prevailing party costs.

Respectfully submitted,

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Counsel for Steven P. Shea

CERTIFICATE OF SERVICE

I certify that a copy of this motion to vacate panel's sanctions was hand-delivered on June 11, 1999 to Lauri Waldman Ross, Esq., Ross & Tilghman, Two Datran Center, Suite 1705, 9130 South Dadeland Boulevard, Miami, Florida 33156.

/s/ Arthur J. England Jr.

APPENDIX G

IN THE SUPREME COURT
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE	)	No. SC92,913
RE: STEVEN P. SHEA	)	

MOTION FOR REHEARING

COMES NOW, Steven P. Shea, and respectfully files this his Motion for Rehearing of this Court's opinion issued March 23, 2000, to-wit:

1. Pursuant to Rule 9.330, this Court's attention is respectfully directed to points of law or fact that the court appears to have overlooked and/or misapprehended in considering its opinion in this case.

Request for Rehearing on Motion to Disqualify Panel Chairman

2. In finding that only speculation was alleged in the disqualification motions, the Court overlooked the October 26, 1998 *Renewed* Motion for Disqualification referencing the sworn testimony of Judge Miller admitting ex-parte conversations with the Chairman. (Q. *"And what did you and Judge Kaney talk about? A. I had a copy of a newspaper article, and we discussed the newspaper article."* p. 49-50, Miller deposition, October 14, 1998). As Judge Miller was a primary complainant, communications of this type before and during the course of a JQC hearing has required disqualification as a mandate of the Code of Judicial Conduct. *Rose v. State*, 601 So.2d 1181 (Fla. 1992).

At a minimum, disclosure is required. *In Re Frank*, 25 Fla.L.Weekly S147 (Fla. Feb. 17, 2000).

3. The Court's opinion further did not address allegations in the initial disqualification motion regarding comments made by the Chairman to a Keys' newspaper criticizing Judge Shea's ruling in a pending case. (See Canon 3B(9) prohibiting such comments).

4. The Court may have misinterpreted the clear language of JQC Rule 25(a) which fails to incorporate Rule 2.160(f) and omits determination of a sufficient factual basis. (Upon the filing of the requisite affidavits, the member *"shall proceed no further therein and shall be disqualified from hearing said charges"*). (*See Halsell v. State*, 672 869, 870 (Fla. 3d DCA 1996). *Gore v. State*, 719 So.2d 1197, 1199 (Fla. 1998) pertaining to fidelity to rules.)

5. As further proof of bias, the Court may have overlooked the Chairman's refusal to permit significant impeachment evidence as to prosecution witnesses (T-127, T-181, T-191, T-2058); his initiative in preventing the testimony of the Deputy Director of The Florida Bar as well as other witnesses prepared to refute the prefatory charges; (T-2935; T-2293); cutting off counsel's prepared motion to dismiss the prosecution charges at the JQC hearing. (T-1166). [(See *Inquiry Concerning A Judge, RE: Alan R. Schwartz*, No. SC95422 (March 30, 2000), where judge reprimanded for cutting short arguments by counsel at hearing]; the Chairman's dining with a prosecution witness during the course of the JQC hearing in Key West.

6. This Court should reconsider its findings regarding the Chairman's failure to disclose and to disqualify

himself in this matter. This Court should reconsider the argument that the JQC's findings should be rejected in their entirety due to the improper participation of the Chairman.

Request for Rehearing Court's Finding of Admission

7. The Court appears to have overlooked the record in finding *("Judge Shea admits that . . . if their clients did not buy out the trailers, Judge Shea would recuse himself from all of their cases")* since it is contrary to the findings of the JQC which stated that *"Judge Shea . . . denies saying "give me $150,000.00 and I'm out of here".*

8. The record further contradicts the finding. Although Mr. Mulick testified that Judge Shea mentioned a buy-out, his testimony was not corroborated by his law partner. Mr. Beckmeyer. At no time did Mr. Beckmeyer testify that Judge Shea mentioned money or a buy-out, only that he disclosed a conflict of interest. The finding is further contradicted by extensive hearing testimony of Judge Shea, (T-2469, 2471, 2476, 2478-2479, 2827-2828) as well as his deposition testimony (p. 161, 164, 176, 183, 191-192, 198-199, 201).

9. The Court may have overlooked the fact that Mr. Beckmeyer initiated the question to Judge Shea *" . . . is there any way this can be worked out"* and discussing purchase of the homes (T-156; T-2471). Although Mr. Mulick's memory was different, Judge Shea testified that at the initial Saturday morning conversation, he was advised by Mr. Mulick that in view of the obvious conflict, they would not be representing the Park Owner. The

evidence appears clear and convincing that Mr. Beckmeyer overruled that decision. Based on all the testimony of Judge Shea, it was clear that he was not interested in selling and simply wanted a definitive answer as to whether there was a conflict of interest.

10. Again, in testimony contradicting Mr. Mulick, numerous witnesses consistently testified that the home at Lot 6 was never for sale, and the home at Lot 47 was under a contract for sale. It is the JQC and the Court's obligation to balance Mr. Mulick's sole testimony with that of all other evidence to validly determine whether the facts he testified to were supported by clear and convincing evidence. (See testimony of Robert Cintron, Esq., (association attorney: T-1167); Randy Sadtler, Esq., (who contradicted Mr. Mulick's testimony regarding substance of conversations: T-1468); Homeowners' Association president Fritz Oppenlander, (T-1200); Former association president Esther Gosnell, (T-1834); John Reed, Esq., Mr. Mulick's co-counsel for the park owner (whose deposition testimony directly contradicted Mr. Mulick's testimony:); Paula Wolgast Shea (who overheard the initial Mulick conversation and directly contradicted Mr. Mulick: T-2271); Coral Key Village mobile homeowner Karen Benson (who also overheard a conversation between Judge Shea and Beckmeyer/Mulick, and contradicted testimony that threats were being made or payment demanded: T-1292); Judicial assistant Lee El Koury (who testified that it was not on a Saturday at his home that Judge Shea advised Mssrs. Beckmeyer and Mulick of the value of his homes, which was said in a "normal" tone rather than demanding or threatening: T-1618); Wisconsin resident Bill Trost (who testified that he offered

$125,000 for just one home and that the home was not on the market: T-1705); and Coral Key tenant L. Winnemucca (who testified that he held a Contract for Sale on the home at Lot 47 and that Judge Shea always maintained that he was going to contest the eviction. (T-1715).

Request for Rehearing on Finding that Judge Shea sought an "inflated" amount

11. To reach the decision that there was clear and convincing evidence that the value stated constituted an "inflated" amount, this Court must necessarily overlook and ignore not only the total weight of the evidence, but the express JQC Findings which established that it could not determine values were exorbitant or inflated. No evidence whatsoever was presented by the Prosecutor as to value. Several witnesses (including expert appraiser George Rosendale: T-1316) corroborated Judge Shea's estimate of the market value. This court may have overlooked the fact that although the JQC Prosecutor announced to the Court that she would be calling an expert appraiser to prove value, in fact no such witness was ever presented. Ms. Ross apparently chose to prove the value of the homes by simply attacking Judge Shea's valuation witnesses. The Court should reconsider its finding that the values stated were inflated.

Motion for Rehearing: Charge No. 1

12. The Court's opinion in finding Judge Shea violated the Code by clear and convincing evidence regarding Charge No. 1 depends on the accuracy of the testimony of Mr. Mulick. To find that such testimony

should form the basis of this opinion, the inconsistencies, confusion and contradictions must necessarily be disregarded. Judge Shea moves for reconsideration based on the following contradictions of Mssrs. Mulick and Beckmeyer's own testimony and that of their co-counsel, (in addition to all defense witness testimony), in accordance with the standards set forth in *Inquiry Concerning Davey*, 645 So.2d 398, 400, (Fla. 1994).[1]. (denying involvement with eviction: T-84, 86, 87, 90, 113, 122-125, 127, 134, 170); (admitting involvement with eviction: T-106, 108, 113, 122-125, 134, 170, Reed deposition p.6); (failing to recall: 106, 127, 134); (admitting conflict: T-113; 170); (denying conflict: Reed Deposition p. 10: *"Mr. Mulick told me the prospect of Judge Shea recusing himself from Mr. Mulick's cases was not viewed by Mr. Mulick as a problem*); billing records and file correspondence showing eviction work; conflicting testimony between the attorneys as to whether threats were made. (T-113).

Motion for Rehearing:
Remaining Seventeen (17) Charges

13. Having established above that the JQC could not have met the minimum standards of establishing a violation by clear and convincing evidence in Charge No. 1, Judge Shea moves for rehearing of this Court's findings of violation as to the remaining seventeen charges. The Court did not, and indeed could not, find clear and

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[1] Testimony that is indecisive, confused and contradicted by others was a "far cry from the level of proof required to establish a fact by clear and convincing evidence".

convincing evidence that violations of the Code of Judicial Conduct occurred in each of the remaining seventeen charges. This is particularly true regarding matters which strike at the heart of judicial independence – the right of a judge to privately confer with and even disagree with other judges and to issue rulings free of JQC appellate review. In a case where the reputations of both the JQC and a judge hang in the balance, nothing less than scrupulous review of a full record is warranted. Hundreds of thousands of dollars in fees and expenses were incurred by Judge Shea to rebut false and malicious charges, as well to correct distortions of proper, judicial conduct. The Court should reconsider its blanket approval of the JQC's finding of violations as to all the remaining charges and a determination made that none are proven by any clear and convincing evidence. The Court should reject the JQC's findings that violations of the Code occurred by virtue of the following conduct: (Issuing proper Rule to Show Cause based on appellate law; seeking appropriate substance abuse/mental health services to the Court; requiring compliance with mandated nonlawyer forms of the Court; engaging in private discussions with judges; inquiring into improper sexual harassment of a prisoner by a bailiff after request by bailiff commander; privately supervising errant court personnel; requiring strict compliance with this Court's mandates in capital cases including requiring minimum standards of defense counsel and determining and ruling on motions for recusal after seeking guidance from judicial death penalty experts; denying multiple motions for rehearing; prohibiting attorneys from engaging in ex-parte communications, advising of possible bar referral if attorney

misconduct continues, after consultation with staff attorney of The Florida Bar; seeking review of administrative orders and/or local rules in accordance with the Rules of Judicial Administration and after conferring with Chair of Local Rules Advisory Committee; advising the Clerk of Court of potential problems in their office.)

Rehearing Regarding Dismissed Charges and Payment of Costs

14. In ruling that twelve charges were dismissed by the Hearing Panel for lack of clear and convincing evidence, the Court obviously overlooked the record. After Judge Shea filed summary judgment motions and spent thousands of dollars preparing to defend the charges, the prosecutor announced that she was dismissing twelve charges (Nos. 5, 10, 11, 13, 14, 24, 25, 29, 30, 34, 35, 37) since no evidence was presented. (T-1163). One other charge (No. 19) was never addressed and simply abandoned. The Hearing Panel later dismissed six other charges due to lack of clear and convincing evidence. In a case of this magnitude where a jurist's life, reputation and career hang in the balance, scrupulous attention to the record should be in order.

15. The matters hereby brought to this Court's attention should be thoroughly considered in order to fulfill this Court's constitutional responsibility to independently review the JQC's findings and to discover the truth in this matter.[2] Upon full review of these points, it is

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[2] In stating that it is the duty of a judge to assert his innocence when so believed, this Court pointed out that *"the*

respectfully suggested that this Court should find that the JQC Hearing Panel's finding of violations of the Code and its Conclusion that Judge Shea should be disciplined were biased and flawed and not based on clear and convincing evidence, and this Court's adoption of the JQC's Findings and Conclusion should be vacated and rejected in their entirety.

Respectfully submitted,

/s/ James Wattigny
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Counsel for Steven P. Shea

Commission above all is interested in seeking the truth." Inquiry Concerning Davey, supra. Failure to do so would result in a severe miscarriage of justice not only affecting Judge Shea and his family personally and professionally, but would seriously undermine the public's confidence in the legal and judicial system as a whole.

CERTIFICATE OF SERVICE

I certify that the original of the above and foregoing was hand-delivered on this date to the Clerk of Court, Clerk of the Supreme Court, Supreme Court Building, 500 South Duval Street, Tallahassee, FL 32399-1925, with a copy forwarded by U. S. Mail to Lauri Waldman Ross, Esq., Ross & Tilghman, Two Datran Center, Suite 1705, 9130 South Dadeland Boulevard, Miami, Florida 33156, and John Beranek, Esq., Attorney for the Hearing Panel, Ausley & Calhoun, 227 South Calhoun Street, Tallahassee, FL 32302, this 7th day of April, 2000.

/s/ James Wattigny
James Wattigny, Esq.

APPENDIX 7

IN THE SUPREME COURT
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE	)	No. SC92,913
RE: STEVEN P. SHEA	)	

MOTION FOR DISQUALIFICATION OF CHIEF JUSTICE HARDING AND JUSTICE WELLS

COMES NOW, Steven P. Shea, and respectfully files this his Motion for Disqualification of Chief Justice Major B. Harding and Justice Charles Wells, and states as follows:

1. On March 23, 2000, this Court issued its Opinion in the above matter which was joined in by Chief Justice Major B. Harding and Justice Charles Wells.

2. For reasons set forth below, said Justices may be under investigation by the opposing party in this case, the Florida Judicial Qualifications Commission ("the JQC"), which would require disqualification of said Justices in this case.

3. Prior to the issuance of the Opinion, the St. Petersburg Times reported on March 18, 2000, that Justices Harding and Wells substantively assisted in shaping the Death Penalty Reform Act passed by the Florida Legislature in January, 2000, including submitting to the Speaker of the House a proposed bill. (Exhibit A). The article referred to the possibility of a recusal motion being filed arising from the Justices' participation in the March

2000 oral argument contesting the constitutionality of this Act.

4. On or about March 24, 2000, Motions for Immediate Disqualification of Justices Harding and Wells were filed in Cases No. SC00-410; SC00-242; SC96,646; SC00-113, and SC00-154. In the Motion to Disqualify, Movants suggested that the actions of the Justices were contrary to their recent JQC decision *Inquiry Concerning a Judge: In Re Frank*, 25 Fla.L.Weekly. S147 (Fla., 2/17/2000),[1] which opinion found that failure to disclose certain conduct could warrant disciplinary conduct and a reprimand. Such discipline would necessarily have to be recommended by the JQC, the same body who has stridently prosecuted Judge Shea and who now asks this Court to affirm its Findings and Recommendations against Judge Shea.

5. On March 25, 2000, the St. Petersburg Times reported that attorneys for death row inmates demanded that Justices Harding and Wells disqualify themselves from ruling on the constitutionality of the death penalty act. In such article, references were made to possible impropriety by the Justices as well as possible violations of the Code of Judicial Conduct in failing to disclose their ex-parte contact with the legislature. (Exhibit B).

6. On March 30, 2000, Justices Harding and Wells entered orders denying the Motions for Immediate Disqualification due to legal insufficiency.

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[1] In Judge Frank's case, this Court ruled that *"Judges must do all that is reasonably necessary to minimize the appearance of impropriety"*.

7. Following the denial of the motions, an article appeared in the April 1, 2000 edition of the St. Petersburg Times which reported that e-mails and other documents obtained by the paper suggested input into the act by the justices and raised new questions about ties between the justices and legislatures. (Exhibit C).

8. It is the duty and responsibility of the JQC to investigate any allegation of misconduct levied by any party against Justices Harding and Wells. Canon 3E(1) provides that "a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned".

9. The JQC is an all-powerful body with absolutely no oversight except by the Florida Supreme Court. Any judge who has had public charges of possible impropriety or misconduct levied against him, especially if not yet formally charged, has an understandable yet obvious interest in cooperating with the JQC. There is an inherent conflict of interest for any justice publicly charged with a possible violation of the Code of Judicial Conduct to preside over any JQC disciplinary case. This is particularly true if the proceeding is pending. Justices Harding and Wells should recuse themselves from deliberating on the Motion for Rehearing in this case. The participation by these Justices in any decision in this matter violates Judge Shea's constitutional rights of due process and a truly independent and impartial review by this Court.[2]

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[2] In making this argument, Judge Shea understands all too well that *false* allegations of violating the Code of Judicial Conduct can be levied against a judge.

10. Justices Harding and Wells should recuse themselves from any consideration of the motions set forth herein. In addition, Judge Shea requests full and immediate disclosure of any pending disciplinary matters between members of this Court and the JQC, and any Justice who may be subject to any pending disciplinary investigation by the JQC should immediately disclose and/or disqualify himself or herself from participating in any deliberations in this case.

Respectfully submitted,

/s/ James Wattigny
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Counsel for Steven P. Shea

CERTIFICATE OF SERVICE

I certify that the original of the above and foregoing was hand-delivered on this date to the Clerk of Court, Clerk of the Supreme Court, Supreme Court Building, 500 South Duval Street, Tallahassee, FL 32399-1925, with a copy forwarded by U. S. Mail to Lauri Waldman Ross, Esq., Ross & Tilghman, Two Datran Center, Suite 1705, 9130 South Dadeland Boulevard, Miami, Florida 33156, and John Beranek, Esq., Attorney for the Hearing Panel, Ausley & Calhoun, 227 South Calhoun Street, Tallahassee, FL 32302, this 7th day of April, 2000.

/s/ James Wattigny
James Wattigny, Esq.

Crist: Justices shaped new law

Florida justices Harding and Wells say they had no substantial input into new limits on death penalty appeals. Rep. Victor Crist says otherwise.

By JO BECKER

© St. Petersburg Times, published March 18, 2000

TALLAHASSEE – The sponsor of a new law limiting death penalty appeals says that two state Supreme Court justices privately consulted with the Legislature during the crafting of the measure, a contention that raises questions about whether the justices should recuse themselves now that the law has been challenged in their court.

Chief Justice Major Harding and Justice Charles Wells were in "direct contact" with House Speaker John Thrasher, according to Rep. Victor Crist, a Republican from Temple Terrace who sponsored the legislation to speed up executions. Crist said the justices made last-minute suggestions that changed the substance of the bill passed in a special session in January.

Both justices deny they had any say in shaping the substance of the new law.

Crist is angry because he thinks the Legislature did its best to heed the court's advice in writing the law, only to have the two justices join the rest of the court last month in ruling to put the law on hold after attorneys for death row inmates argued that it is unconstitutional. The court – with Harding and Wells sitting in judgment – heard arguments on the case this week.

"We consulted with Wells, we consulted with Harding, and we did it the way we were told to do it," said Crist. "At the last minute, per the speaker's request, based on recommendations from the court, we made additional changes. It was based on what the justices were telling the speaker."

Those changes, Crist said after checking with his aide Don Rubottom, included making an exception to the absolute limit on appeals for newly discovered evidence of innocence. Another change split the legislation into two separate bills: one to limit appeals and another making lethal injection the state's primary execution method. Crist had publicly vowed not to do either up until the day he made the changes.

In the interests of remaining fair and impartial, judges are not supposed to comment, publicly or in private, on the substance of matters that are either before them or certain to come before them. Even before the death penalty law passed, it was clear that it would wind up before the state Supreme Court.

But justices can have conversations with legislative leaders about administrative issues: how a law might affect the caseload or budget of the courts. These days, those conversations take place in a difficult climate. Many Republican lawmakers view the court as too liberal and are pushing to diminish the court's power.

In this case, Wells denied having any input into the death penalty appeals legislation. Wells said he has spoken to Thrasher only on unrelated matters: "Not to talk about that bill, not that I remember."

Harding initially said he had "one conversation" with Thrasher to discuss the law's fiscal impact on the courts. "I spoke to the speaker one time about considering that judicial resources would be required," Harding said.

Though a draft of the proposed new law was forwarded to the court, Harding said he "never discussed any of the merits of the legislation." He said he saw no reason to disclose the conversation to lawyers who attended this week's oral arguments.

Thrasher remembers things differently, saying he met with Harding once and had "one or two telephone conversations with him." He said he thought the conversations were entirely appropriate.

"We sent some information to them (the justices) about what we were thinking about, more in the line of concepts than anything else," Thrasher said. "I wouldn't let them draft the bill, but they were interested in discussing the concepts about court procedures that were included in the bill. That's what they were interested in talking about."

A letter from Thrasher indicates that Harding came by his office Dec. 17, just 19 days before the special session. In the letter, Thrasher thanked Harding for coming to see him to "present" a bill on the appeals issue.

The bill effectively split the difference between what a court-appointed commission was recommending to speed up death penalty appeals and what the Legislature was contemplating. "I do appreciate your suggestions and input into our deliberations," Thrasher wrote. "As we

both progress toward adopting a set of reform proposals, I am grateful for your input into our work product."

After reading a fax of Thrasher's letter, Harding said in a subsequent interview Friday that the bill was put on his desk the day he was scheduled to see Thrasher. He said he brought it to the meeting and "gave it to him for information."

"How he took it I can't control – I know what the letter says," Harding said. "The court took no position . . . . It would have been totally inappropriate for me to have made recommendations."

The proposal Harding gave Thrasher was the brain-child of Philip Padovano, a member of the commission the court set up in March 1999 to study the issue of how to reduce unnecessary delays in carrying out the death penalty. The commission's recommendations came out in September.

But as it became clear that the legislature wanted to go in a different direction, Padovano said that he came up with a new proposal. In December, he presented it to the state Supreme Court. Another judge, Charles Miner of the 1st District Court of Appeal, liked it so much he decided to turn it into a bill. Miner said he forwarded the bill to Harding as a courtesy. Both judges said Harding gave them no indication of his feelings about the proposal.

In the end, the Legislature did not adopt Padovano's proposal. Still, Crist was astounded when he found out that Wells and Harding had denied having input into the law the Legislature finally did pass. "Maybe they have short memories," he said.

* * *

Crist said he had a personal conversation with Harding last year about a similar death penalty appeals bill that died in the 1999 session. "He made some of his concerns known, and of course, he made some recommendations," Crist said.

Crist said Harding's recommendations had nothing to do with administrative matters: "It was about the substance of what were trying to do."

Harding said he recalled meeting Crist when Thrasher brought him to his office last year.

"He probably did call me during the course of the session, but I don't have any recollection of what we discussed," Harding said, adding, "I just don't have any recollection of passing on the validity of any legislation. Here again, it may be the interpretation."

Crist also said he made it known last summer that he would refile the legislation. He said staff from the governor's office, the Senate, the House, and the Judiciary held several meetings "to hammer out the differences."

John Hogenmuller, a lawyer who monitors criminal justice legislation for the court, said he attended meetings, including one held just before the special session. But he said he did not attempt to give the Legislature an indication of the court's feelings.

"I was basically there for the court's information on what they were doing," Hogenmuller said. "As far as providing input or language, no, I wouldn't do that."

But Crist said as a result of those earlier meetings, he made changes to the bill. He then made the additional, last-minute changes as the special session was to begin.

"I got called into the speaker's office and I was told, after conversations with the Supreme Court, it is strongly recommended that we separate (all the proposals into two bills) and that we also provide for a proof of innocence exception," Crist said. "I was told, this is what the courts wanted."

In the end, it may not matter who is correct.

"Even the fact that there is a factual issue here, if I were one of the attorneys representing the death row inmates, I would file a motion to disqualify Harding and/or Wells because their participation is now under a cloud," said Martin McClain, a New York-based lawyer who has represented death row inmates in Florida.

McClain also said that Harding's decision to give Padovano's proposal to Thrasher could lead to some confusion.

"Accepting him (Harding) at his word, I think the chief justice handing you something could easily be misconstrued," McClain said. "I think he would really need to make it clear that it was for informational purposes only and not an endorsement."

But some felt otherwise.

"If you're the chief justice, and someone in the judiciary hands you a proposal that affects the court," said former Supreme Court Justice Arthur England, "I don't think there would be anything wrong with the chief justice handing it over to a committee or the speaker."

– Staff writer Lucy Morgan contributed to this report.

Lawyers demand justices' recusal

Conversations with lawmakers should disqualify them from ruling on the death row appeals law, the attorneys argue.

By JO BECKER

© St. Petersburg Times, published March 25, 2000

TALLAHASSEE – Lawyers for death row inmates demanded Friday that two Florida Supreme Court justices disqualify themselves from ruling on a new death penalty appeals law, saying their conversations with legislators who crafted the law created a "cloud of impropriety."

In two separate motions filed with the Florida Supreme Court, the lawyers took the rare step of asking Chief Justice Major Harding and Justice Charles Wells to recuse themselves "in order to restore confidence in these proceedings."

Lawyers have also asked for an independent judge, called a "special master," to oversee an investigation into the ties between the court and the Legislature.

"To maintain the integrity of independent judicial review, it is essential to lift the cloud of impropriety that now enshrouds these proceedings, especially because the issues presented are, quite literally, matters of life and death," one motion argued.

The court, with Harding and Wells sitting in judgment, heard oral arguments on the new law on March 14 after

lawyers for death row inmates challenged it was unconstitutional. The law is designed to speed up executions by limiting death penalty appeals.

Friday's motions could alter the balance of the seven member court and potentially the outcome of the case itself: Harding and Wells are both considered supporters of capital punishment.

Craig Waters, a spokesman for the court, said he could not comment on the motions.

The justices now must decide whether to recuse themselves from ruling on the appeals law. If they don't, that decision could potentially be appealed in federal court.

The communications between the justices and the lawmakers were disclosed March 18 in the St. Petersburg Times.

Rep. Victor Crist, a Temple Terrace Republican who sponsored the new death penalty law, said at that time that Wells and Harding were in "direct contact" with House Speaker John Thrasher, making last minute suggestions that changed the substance of the legislation passed during a special session in January.

A letter from Thrasher obtained by the Times indicated that Harding came by his office 19 days before the special session to present a draft bill on death penalty appeals.

Both Harding and Wells have denied having any input into the substance of the legislation. In the interests of remaining fair and impartial, judges are not supposed to comment on the substance of matters that are before them or certain to come before them.

Harding has said he gave Thrasher the bill for informational purposes and that their conversations were limited to what impact the Legislature's actions might have on the court.

Crist, after sticking with his version of events in an article published Wednesday, said Friday that "after discussions with the speaker, I now realize I was mistaken."

He now says last minute recommendations came from the attorney general's office. He called the motions to disqualify the two justices "ridiculous, absolutely ridiculous."

"They did nothing wrong," Crist said. "These are the typical antics of the death penalty lawyers grasping at any opportunity they can to try to thwart the system."

Crist again confirmed that he personally spoke to Harding last year about a death penalty appeals proposal similar to the one that passed in January, but said he saw nothing wrong with that because "every single thing we do could eventually come before them (the court)."

Thrasher's spokeswoman Katie Baur called the motions to disqualify "wrong." Earlier this week, she characterized Thrasher and Harding as friends, saying the speaker adores Justice Harding and would be mortified if the situation caused the chief justice any embarrassment.

But in their motions, lawyers for death row inmates repeatedly cited Thrasher's letter to Harding as evidence that the justices should recuse themselves. At the very least, the lawyers argue, the communications should have been disclosed before last week's oral arguments, when

lawyers for Thrasher were allowed to appear before the court.

In his Dec. 20 letter, Thrasher thanked Harding for his "suggestions and input into our deliberations" and staked out the Legislature's position on the proposed new law and a number of other related issues. That letter, lawyers for death row inmates argued, essentially amounted to a private legal brief to which they had no opportunity to respond.

"At a minimum, the justices and the legislators have conflicting interpretations of what occurred," the motions to disqualify argue. "However, any communications that could even have been interpreted by the legislators as a tacit agreement regarding the Court's resolution of inevitable challenges to the (new law) raises an appearance of impropriety."

One of the major issues in the case is whether the Legislature has the right to limit death penalty appeals, or whether that is a function of the court.

Defense attorneys told the court during oral arguments that the Legislature had overstepped its bounds and jeopardized the independence of the judiciary by trying to right strict rules on appeals.

In one of the motions, lawyers said that while they were "defending the independence of this Court in its rulemaking and regulation of the practice of law, at least two Justices of this Court had consulted with members of the Legislature whose views on these issues and whose goals are contrary to the interests" of their clients – death row inmates.

Moreover, the motion points out that since Thrasher's letter, Harding and Wells have decided to allow the speaker to participate in the case challenging the new law, and prevented two death row inmates from joining the case. Those inmates, Terry Sims and Anthony Bryan, have since been executed.

Although the disqualification of a state Supreme Court justice is rare, lawyers for death row inmates argued that justices' recusal there is precedent.

Citing a decision handed down by the state Supreme Court just last month, lawyers argued that the court itself has said that appellate judges have a duty to disclose information that might be relevant to lawyers who might seek to recuse them, even if recusal is not required. Failure to do so, the court ruled, could result in disciplinary action or a public reprimand.

"Judges must do all that is reasonably necessary to minimize the appearance of impropriety," the court ruled. "They must remain cognizant of the fact that even in situations where they personally believe that their judgment would not be colored, public perception may differ."

The lawyers also quoted the Code of Judicial Conduct, which states that "a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned."

Should Harding and Wells disqualify themselves, it is unclear what would happen next. The court could decide to try to reach a ruling on the law with just five justices. But in order for a ruling to be valid, four justices must

vote for one side or the other. The court could also immediately appoint two current judges from a lower court or select former Supreme Court justices to hear the case.

E-mails suggest justices' input

Documents link justices and lawmakers before and after a session on death penalty issues.

By JO BECKER

© St. Petersburg Times, published April 1, 2000

TALLAHASSEE – In the weeks before January's special session on the death penalty, top aides in the House, Senate and governor's office were frantically making last-minute changes to ensure a proposed death penalty law would pass constitutional muster.

Don Rubottom, the House's top staff person on the death penalty, fired off a Dec. 15 e-mail to his counterpart in, the Senate, explaining some revisions.

Clearly, he had the state Supreme Court in mind.

In one passage, Rubottom referred specifically to a point in the bill that he believed was a concern to Supreme Court Justice Charles Wells. Rubottom called it "(the Justice Wells page 23 concern)."

The e-mail and other documents obtained by the St. Petersburg Times raise new questions about ties between state Supreme Court justices and legislators. It is a staple of judicial canons that jurists are not supposed to discuss cases before them with interested parties. But documents suggest that members of Florida's high court met with

lawmakers in the months before and after the January special session to speed up death penalty appeals and switch the state's method of execution to lethal injection.

A challenge of the new appeals law is now before the state's high court. After the Times disclosed other contacts with lawmakers on March 18, death penalty lawyers asked Wells and Chief Justice Major Harding to disqualify themselves from ruling on it. This week, the justices refused.

The new appeals law is aimed at speeding up executions by limiting the number of appeals an inmate can file in state court. At the time Rubottom sent his e-mail, the language on page 23 of the draft bill dealt with what would happen to death row inmates sentenced under the old law, or inmates who were in the "pipeline."

Subsequently, the language was revised and became more specific as to when and how such inmates could appeal their sentences.

Rubottom said he does not remember why he mentioned Wells, one of the court's most conservative justices when it comes to the death penalty. He said Wells never contacted him with a concern about page 23 of the bill.

Perhaps, Rubottom added, he was referring to something Wells said during a Dec. 9 roundtable meeting. At that meeting, justices heard from the Legislature and members of the Morris Commission, an independent panel the court appointed to study death penalty appeals.

"That's the only thing I can think of," he said.

But Justice Wells never publicly expressed any concern at that meeting about what would happen to inmates in the pipeline.

The only thing he pointed out was that different inmates are in various stages of the appeals process. He expressed no opinion about how those cases should be handled, and he never mentioned the House bill.

Court spokesman Craig Waters declined to comment on the e-mail Friday, explaining that he and the justices were in Miami. "There's absolutely no way we can respond right now," Waters said. "I can't figure out what the reference is to. We're just clueless on that."

Questions about the contact between lawmakers and Harding and Wells were first raised in a Times story on March 18.

Rep. Victor Crist, a Tampa Republican who sponsored the new death penalty law, said at the time that Wells and Harding were in "direct" contact with House Speaker John Thrasher, making last-minute suggestions that changed the substance of the legislation. Crist later said he had been mistaken.

Thrasher and Harding met Dec. 17, 19 days before the special session. Harding dropped off a bill that effectively split the difference between what the Morris Commission was recommending and what the Legislature had proposed. The bill was the brainchild of Judge Philip Padovano, a member of the Morris Commission.

Both justices have said they had no input into the substance of the new law. Harding said he dropped off the bill for informational purposes only.

But e-mails between top death penalty advisers for the House, the Senate and the governor's office suggest that staffers crafting the new law kept in mind what they viewed as the court's concerns.

Take, for instance, a Dec. 8 e-mail written by Brad Thomas, one of Gov. Jeb Bush's top policy advisers on the death penalty. The new law places a limit on the number of appeals a death row inmate can file in state court. Thomas did not want to create an exception for inmates who have newly discovered evidence of their innocence.

"We gain nothing by giving in to Padovano and Supreme Court on this," Thomas wrote to Reginald Brown, a senior attorney in the governor's office. One of the changes Crist initially told the Times he made to appease the court was to create the innocence exception both he and Thomas had long opposed. Thomas said this week that he is not sure why he mentioned the Supreme Court in his e-mail.

"I think I may have been thinking of the Morris Commission," Thomas said.

Just days after its approval by the Legislature, the new death penalty law was challenged in a lawsuit filed Jan. 19. Oral arguments were held March 14.

Between those two dates, office calendars for Wells and Harding show they met on several occasions with key lawmakers, several of whom had been deeply involved in writing the new death penalty law and later defending it before the state Supreme Court.

None of those meetings were disclosed to foes of the new law.

Court spokesman Waters said the meetings all dealt with budget matters and the certification of new judges. Waters said it is a long-standing practice for justices to meet with legislators to discuss such administrative matters.

But the line between talking about budget matters and talking about the substance of a case before the court can be blurry.

For instance, both Wells and Harding scheduled a meeting with lawmakers on March 30, 1998. The meeting, according to a memo by Crist, was held to "discuss the critical issue of legal representation of indigent death row inmates."

Twelve days before that meeting took place, a motion had been filed at the state Supreme Court that dealt exactly with the matters Crist wanted to discuss. State-funded death row lawyers had asked the court to put executions on hold, arguing that the state was not giving them enough money to adequately represent their clients.

The Legislature subsequently changed both the structure and funding of the office that represented indigent death row inmates. The court then decided to deny the motion.

– Times researcher Kitty Bennett contributed to this report.

APPENDIX 8

Supreme Court of Florida

FRIDAY, APRIL 7, 2000

CASE NO.: SC92913
Lower Tribunal No.: 97-376
INQUIRY CONCERNING vs. STEVEN P. SHEA
A JUDGE, NO. 97-376

The Motion for Disqualification of Chief Justice Harding and Justice Wells, filed by Steven P. Shea, is hereby denied.

/s/ Charles T. Wells
JUSTICE CHARLES T. WELLS

ATTEST:

/s/ Debbie Causseaux
DEBBIE CAUSSEAUX
Acting Clerk

[SEAL]

dy
Served:

JAMES S. MATTSON
LAURI B. WALDMAN
EILEEN L. TILGHMAN
HON. STEPHEN P. SHEA, JUDGE
MAURICE JAY KUTNER
SAM DANON
DANIEL S. PEARSON
JAMES WATTIGNY
LARRY ERSKINE
JOHN BERANEK
THOMAS C. MACDONALD, JR.
DAVID J. AUDLIN, JR.
PAUL R. LIPTON
DANIEL GELBER
BENJAMIN L. REISS
AURTHUR J. ENGLAND, JR.
JOHN A. REED, JR.

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/s/ Major B. Harding
CHIEF JUSTICE
MAJOR B. HARDING

ATTEST:

/s/ Debbie Causseaux
DEBBIE CAUSSEAUX
Acting Clerk

[SEAL]

dy
Served:

JAMES S. MATTSON
LAURI B. WALDMAN
EILEEN L. TILGHMAN
HON. STEPHEN P. SHEA, JUDGE
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PAUL R. LIPTON
DANIEL GELBER
BENJAMIN L. REISS
AURTHUR J. ENGLAND, JR.
JOHN A. REED, JR.

APPENDIX 9

Judge resigns amid accusations

Circuit Judge Edward Ward had faced an October hearing over charges he sent explicit e-mail to two women and kissed a female judge. His resignation is effective Aug. 31.

By STEVE HUETTEL

© St. Petersburg Times, published June 10, 2000

TAMPA – Hillsborough Circuit Judge Edward Ward has resigned under pressure from a state judicial commission that accused him of sexual misconduct toward four women, including two fellow judges.

Ward sent a letter to Gov. Jeb Bush on Thursday resigning effective Aug. 31, said Thomas C. MacDonald Jr., general counsel for the Judicial Qualifications Commission.

He was scheduled to face a hearing on the charges Oct. 30. But the panel voted to drop the case Friday after Ward, 63, agreed to include in his letter that he would not serve again on the bench, even as a temporary, retired judge, MacDonald said.

The panel decided not to ask Bush to reject the resignation and pursue efforts to remove Ward, he said, because it would be a waste of time and money.

"He's gone and not coming back," MacDonald said. "It would be a squandering of resources to go any further. This is a complete vindication for the commission."

Ward, a judge for 18 years, could not be reached late Friday afternoon. His attorney, Ben Hill, did not return telephone messages for comment.

The JQC in March accused Ward of kissing a female judge without her consent, inviting a judicial assistant into his office for a beer and sending suggestive e-mails to two other women.

The panel charged his conduct was "inappropriate and unwelcomed and could reasonably be perceived as sexual harassment. These acts . . . may impair the confidence of the citizens of this state and the integrity of the judicial system."

Ward admitted to acts that the panel found objectionable but argued they did not amount to sexual harassment.

Hill pointed out that the four women his client was accused of harassing did not file complaints to the JQC. Commission officials would not say how they became aware of the accusations.

Ward wrote in the letter to Bush that he was retiring to prevent further embarrassment to family and friends, MacDonald said. He apologized "to the extent anyone was offended," MacDonald said, but did not specifically apologize to the victims.

The governor's office heard from Ward's administrative assistant that the resignation letter was mailed Thursday but had not received it Friday afternoon, said Bush spokesman Justin Sayfie. Bush will likely name a replacement within 60 to 90 days, he said.

None of the women Ward was accused of harassing could be reached for comment Friday afternoon.

But the husband of Hillsborough Circuit Judge Claudia Isom, one recipient of Ward's explicit e-mails, was glad the case was closed.

"I'm relieved for everyone to have this over with, including Judge Ward, his family and victims," said Woody Isom, a Tampa lawyer. "It's a relief not to read (Judge Isom's) name in the papers again on this."

Chief Judge Dennis Alvarez said he wasn't surprised that Ward bowed out. The hearing before a six-member panel and review by the Florida Supreme Court could have stretched out more than a year.

"Basically, he admitted to the conduct, though not the extent of the charges," he said. "Why go through a hearing when you feel you already know the results?"

Gov. Bob Graham appointed Ward as a Hillsborough County judge in 1981. The following year, Ward was elected to the county bench.

In 1986, he was elected to the circuit bench. He recently presided over a dispute involving Tampa General Hospital's records and in 1998 upheld a controversial teen curfew law.

In early 1998, according to the commission's charges, Ward sent several unwelcome e-mails of a personal and sexual nature to Michelle Boylan, judicial assistant to Judge Dick Greco Jr. About the same time, he forwarded sexually explicit e-mails to Isom.

The two judges began trading jokes by computer about their upcoming skit for a courthouse luncheon at the Columbia restaurant in Ybor City. After the skits, Ward sent an e-mail later released in court records:

"What we should do someday is "sneak' down to the Columbia for our own little (& private) "happy hour' replete with a margarita – or two or three depending on

what it takes to lower the inhibitions – and ease into the banquet room, mount the stage, and either up front – if no one is there – or backstage – for the discreet and cowardly – do an exotic close dance."

He signed it "Lover Boy."

When she didn't respond an hour later, he wrote that he assumed she wanted him to stop the messages. She responded: "Your assumption is correct. Please cease and desist."

In August 1999, Ward came into the courthouse while on vacation after having "at least one beer" and dropped in on judicial secretary D.D. Agostini at her office, according to the JQC charges.

He asked her to drop by his office for a beer in his chambers, a request he had made before, the charges state. She declined, as she had before.

Ward also approached Judge Vivian Maye while she was working and kissed her without her consent, the charges said.

Ward is married with three children. His wife, Maryanne, works in the courthouse as a mediator, Alvarez said.

"I've always known him to be a very dedicated judge. I can't say anything negative about his judicial ability," he said.

APPENDIX 10

The ruthless pursuit of a judge

By MARTIN DYCKMAN

© St. Petersburg Times, published June 29, 1999

In commenting last week on the death of Richard T. Earle Jr., who chaired Florida's Judicial Qualifications Commission during its finest hours, I noted that he had believed as firmly in rehabilitating salvageable judges as in getting rid of those whose misconduct was unpardonable.

But Earle left and the JQC eventually became ruthless. Splitting the commission into two panels, one to file charges and the other to try them, doesn't seem to have abated its thirst for blood.

The latest case in point concerns suspended Circuit Judge Steven P. Shea of Key Largo, an outsider (from Louisiana) who made the mistake of running against and defeating one of Monroe County's insiders. Monroe County politics are famously close, personal and brutish. Shea's troubles with prosecutors, bailiffs and other judges developed soon after.

When I last wrote about Shea, it was to report how the JQC had allowed its prosecutor, Lauri Waldman Ross, to smear him as a wife-beater even though no such thing had even been hinted at in any of the 55 original complaints against him or the 37 formal charges. During a deposition, she popped the question, "Have you ever domestically abused your first wife?," but never proved it. She hadn't even interviewed Shea's ex-wife, Gay Ann

Tangen, perhaps because she knew Tangen would deny it as firmly as Shea did.

Ross did persuade the JQC to convict Shea of 18 charges – she abandoned 13 herself and the panel dismissed six more – and to recommend that the Supreme Court remove him from the bench. Pleadings and arguments are pending.

Only two of the charges have substance. The rest are garbage. The Supreme Court easily could dismiss them all because the JQC trial panel's chairman, Circuit Judge Frank N. Kaney of Kissimmee, serves on a judicial college with two of the Monroe judges who are Shea's enemies and refused to disqualify himself.

The JQC also indulged its overkill instinct in a decision to charge Shea all the costs of prosecuting him, including Ross' fees, on grounds that he had abused the discovery process.

With nearly a third of the original charges having evaporated along the way, it would seem rather obvious that it wasn't Shea who was abusing the process. "Gone," wrote his new chief counsel, Arthur J. England Jr., a former Florida chief justice, "are all of the headlinegrabbing charges which had sensationalized the proceeding and irresponsibly defamed Judge Shea – wife-beating, gun-brandishing, picking up prostitutes, sexual harassment of a clerk, publicly criticizing judges in open court. Absent from the charges against Judge Shea is any criticism of his bench conduct."

As to Ross' fees, England's case is already as good as won. The court established a precedent June 17 in refusing to assess the JQC's legal fees to former Hillsborough County Judge Elizabeth Hapner, who was removed from the bench last year. The JQC wanted $87,203 from Hapner; it will get only a fraction of that.

"It is particularly important that an accused judge not be placed in the position of forgoing a defense against unwarranted charges because he or she might otherwise face financial ruin if unsuccessful in the proceeding," the court said.

It is also important that Florida judges not be railroaded at the whim of colleagues and prosecutors who bear grudges. Stripped of all but two charges, that's what the case against Shea comes down to.

One concerns a woman who complained to the governor – falsely, Shea thought – about his rulings in her child support case. He accused her of contempt, then stepped aside. Another judge dismissed the charge, and Shea admitted to the JQC that he had been too "thin-skinned." In the other, Shea had conversations with two local attorneys whose client was trying to dispossess him and other tenants of a trailer park. Shea admits telling them that he would have to disqualify himself from all their cases while that issue was pending. This was true, but he shouldn't have told them that.

England's brief concedes that Shea could be reprimanded for these incidents. That would be punishment enough, given what Shea has already had to endure. His removal would be an outrage.

In defense of a free judiciary

By MARTIN DYCKMAN Associate Editor

© St. Petersburg Times, published August 23, 1998

Steven P. Shea is, for now, a circuit judge in Key Largo. But not for long, if his many enemies, including a headstrong prosecutor for the Florida Judicial Qualifications Commission, have their way.

The JQC, sometimes a watchdog and sometimes a lap dog over the years, is in one of its junkyard moods. In May, its investigative panel hit Shea with 33 – later 37 – formal misconduct charges and got the Supreme Court to suspend him with pay, but without a hearing, pending a trial before the JQC's hearings panel.

The charges include such headline grabbers as sexual harassment, threatening a defendant with a gun and trying to extort a personal settlement from two lawyers. There are others that only lawyers would understand. Some seem serious, some petty and some absurd. It will take a trial to sort them out.

However, much of the case boils down to complaints that he was rude to some prosecutors, bailiffs and fellow judges and that he even – gasp! – publicly disparaged some. Given Monroe County's reputation as a closed and incestuous society, to which Shea did not belong, they may have had it coming.

About the only thing the JQC didn't accuse him of was beating his wife.

Its special prosecutor, Lauri Waldman Ross, took it upon herself, to take care of that.

During a deposition June 5, she stunned Shea and his lawyers by asking, "Have you ever domestically abused your first wife?"

After a long argument over the propriety of the question, Shea agreed to answer.

"Never," he said.

Ross said she would produce proof later and moved on. The press was present, and, unproved though it might be, the damage was done.

It was a stretch to link wife-beating, true or not, to any of the charges against Shea.

Stranger than that, however, was this: Ross hadn't bothered to interview the ex-wife, Gay Ann Tangen. In a sworn affidavit, Tangen called the charge "absolutely untrue" and said she was "appalled and incensed" that Ross laid it before the press "without even talking to me first."

Shea's lawyers appealed unsuccessfully to the hearing panel's chairman, Circuit Judge Frank N. Kaney of Kissimmee, to stop Ross from ranging outside the formal charges, and to make her turn over witness statements that should have become public documents by now. Under Florida's Constitution, disciplinary charges against a judge are secret until the JQC finds "probable cause" to prosecute them. But Ross' view – and evidently Kaney's – is that once a charge is made witnesses can be questioned on anything new that might, however remotely, support it.

Kaney also refused Shea's request to disqualify himself. He serves on a judicial college with two Monroe judges who are out to get Shea.

The Supreme Court, which would rule on any JQC finding for Shea's reprimand or removal, said it was powerless to intervene. The 3rd District Court of Appeal conceded it had jurisdiction but refused to use it.

One of Ross's dubious questions concerned a 12-year-old complaint to the Bar, when Shea was in private practice, that the Bar dismissed as unfounded. His lawyers say it was filed by an investigator for the JQC "following (Shea's) refusal to testify adversely" against a judge.

At the time, Shea denounced the JQC in a letter to the Florida Bar News. So there is a documented history of bad blood between them.

I talked with Ross on the telephone Thursday. The interview turned combative after I asked what the wife-beating issue had to do with the case.

Ross cited two of the formal charges, which say that Shea (in her words) conducted "a personal vendetta with respect to the domestic abuse shelter. "The questions to his own personal history went to his bias against domestic shelter victims," she said.

Shea denies those charges – persuasively, in my view. But even if it they were true and the wife-beating issue was relevant, shouldn't Ross have interviewed the ex-wife first?

"I didn't have to," she said. "I had the statement of a witness." That witness, a former co-worker of Tangen's, claims to have seen Shea and Tangen argue violently, that

she saw Tangen, show up at work with bruises on her face, and that Tangen said Shea had caused them. (Tangen insists the woman has her confused with someone else.)

But even taking that to be true, Tangen would still be the principal witness. Wouldn't it have been prudent to interview her first?

"You may think so," said Ross. "I think there are unusual circumstances with Judge Shea and his ex-wife that she would back up anything he said." Ross refused to say what these "unusual circumstances" are. "I'm not going into it," she said. "I'll get it from other witnesses."

Tangen said in her affidavit that she and her husband are fiends with Shea and his present wife, attend Mass together and babysit for each other's children.

There is too much to the case to squeeze into this space. Internet junkies can read more at http://www.mattsontobin.com, a Web site maintained by two of Shea's lawyers. It's their side, of course, but Shea faithfully quotes the JQC charges along with his explanations and denials.

On Friday, Shea appealed to the full hearing panel to overrule its chairman and restrain its runaway prosecutor. Miami Attorney Daniel Gelber – a former federal prosecutor – wrote in Shea's behalf:

"A process in which one side is policeman, prosecutor, judge and jury has great potential to be unfair. The JQC guarantees this outcome if it fails to comply with its own rules and takes unfair advantage of its superior position. No process in our justice system is granted such broad and unchecked powers. If at day's end the JQC has destroyed an elected public servant by bankrupting him

and defaming him in the media, then it has not done its job. This process – more than any other – must endeavor to be fair, lest it devolve into what it was created to combat."

The facts are not the issue at this point. Fairness is. At stake is nothing less than the independence of the judiciary. If a judge can be sacked simply because he got cross with the prosecutors (it is noteworthy that none of the public defenders is a complainant) then no one's civil rights means anything. One would hope that there's more to the Shea case than that. But the way it has gone so far does not inspire much confidence.

APPENDIX 11

SECTION 12. Discipline; removal and retirement .–

JUDICIAL QUALIFICATIONS COMMISSION. –
A judicial qualifications commission is created.

(1) There shall be a judicial qualifications commission vested with jurisdiction to investigate and recommend to the Supreme Court of Florida the removal from office of any justice or judge whose conduct, during term of office or otherwise occurring on or after November 1, 1966, (without regard to the effective date of this section) demonstrates a present unfitness to hold office, and to investigate and recommend the discipline of a justice or judge whose conduct, during term of office or otherwise occurring on or after November 1, 1966 (without regard to the effective date of this section), warrants such discipline. For purposes of this section, discipline is defined as any or all of the following: reprimand, fine, suspension with or without pay, or lawyer discipline. The commission shall have jurisdiction over justices and judges regarding allegations that misconduct occurred before or during service as a justice or judge if a complaint is made no later than one year following service as a justice or judge. The commission shall have jurisdiction regarding allegations of incapacity during service as a justice or judge. The commission shall be composed of:

a. Two judges of district courts of appeal selected by the judges of those courts, two circuit judges selected by the judges of the circuit courts and two judges of county courts selected by the judges of those courts;

b. Four electors who reside in the state, who are members of the bar of Florida, and who shall be chosen by the governing body of the bar of Florida; and

c. Five electors who reside in the state, who have never held judicial office or been members of the bar of Florida, and who shall be appointed by the governor.

(2) The members of the judicial qualifications commission shall serve staggered terms, not to exceed six years, as prescribed by general law. No member of the commission except a judge shall be eligible for state judicial office while acting as a member of the commission and for a period of two years thereafter. No member of the commission shall hold office in a political party or participate in any campaign for judicial office or hold public office; provided that a judge may campaign for judicial office and hold that office. The commission shall elect one of its members as its chairperson.

(3) Members of the judicial qualifications commission not subject to impeachment shall be subject to removal from the commission pursuant to the provisions of Article IV, Section 7, Florida Constitution.

(4) The commission shall adopt rules regulating its proceedings, the filling of vacancies by the appointing authorities, the disqualification of members, the rotation of members between the panels, and the temporary replacement of disqualified or incapacitated members. The commission's rules, or any part thereof, may be repealed by general law enacted by a majority vote of the membership of each house of the legislature, or by the supreme court, five justices concurring. The commission

shall have power to issue subpoenas. Until formal charges against a justice or judge are filed by the investigative panel with the clerk of the supreme court of Florida all proceedings by or before the commission shall be confidential; provided, however, upon a finding of probable cause and the filing by the investigative panel with said clerk of such formal charges against a justice or judge such charges and all further proceedings before the commission shall be public.

(5) The commission shall have access to all information from all executive, legislative and judicial agencies, including grand juries, subject to the rules of the commission. At any time, on request of the speaker of the house of representatives or the governor, the commission shall make available all information in the possession of the commission for use in consideration of impeachment or suspension, respectively.

(b) PANELS.- The commission shall be divided into an investigative panel and a hearing panel as established by rule of the commission. The investigative panel is vested with the jurisdiction to receive or initiate complaints, conduct investigations, dismiss complaints, and upon a vote of a simple majority of the panel submit formal charges to the hearing panel. The hearing panel is vested with the authority to receive and hear formal charges from the investigative panel and upon a two-thirds vote of the panel recommend to the supreme court the removal of a justice or judge or the involuntary retirement of a justice or judge for any permanent disability that seriously interferes with the performance of judicial duties. Upon a simple majority vote of the membership of the hearing panel, the panel may recommend to the

supreme court that the justice or judge be subject to appropriate discipline.

(c) SUPREME COURT. – The supreme court shall receive recommendations from the judicial qualifications commission's hearing panel.

(1) The supreme court may accept, reject, or modify in whole or in part the findings, conclusions, and recommendations of the commission and it may order that the justice or judge be subjected to appropriate discipline, or be removed from office with termination of compensation for willful or persistent failure to perform judicial duties or for other conduct unbecoming a member of the judiciary demonstrating a present unfitness to hold office, or be involuntarily retired for any permanent disability that seriously interferes with the performance of judicial duties. Malafides, scienter or moral turpitude on the part of a justice or judge shall not be required for removal from office of a justice or judge whose conduct demonstrates a present unfitness to hold office. After the filing of a formal proceeding and upon request of the investigative panel, the supreme court may suspend the justice or judge from office, with or without compensation, pending final determination of the inquiry.

(2) The supreme court may award costs to the prevailing party.

(d) The power of removal conferred by this section shall be both alternative and cumulative to the power of impeachment.

(e) Notwithstanding any of the foregoing provisions of this section, if the person who is the subject of

proceedings by the judicial qualifications commission is a justice of the supreme court of Florida all justices of such court automatically shall be disqualified to sit as justices of such court with respect to all proceedings therein concerning such person and the supreme court for such purposes shall be composed of a panel consisting of the seven chief judges of the judicial circuits of the state of Florida most senior in tenure of judicial office as circuit judge. For purposes of determining seniority of such circuit judges in the event there be judges of equal tenure in judicial office as circuit judge the judge or judges from the lower numbered circuit or circuits shall be deemed senior. In the event any such chief circuit judge is under investigation by the judicial qualifications commission or is otherwise disqualified or unable to serve on the panel, the next most senior chief circuit judge or judges shall serve in place of such disqualified or disabled chief circuit judge.

(f) SCHEDULE TO SECTION 12. –

(1) Except to the extent inconsistent with the provisions of this section, all provisions of law and rules of court in force on the effective date of this article shall continue in effect until superseded in the manner authorized by the constitution.

(2) After this section becomes effective and until adopted by rule of the commission consistent with it:

a. The commission shall be divided, as determined by the chairperson, into one investigative panel and one hearing panel to meet the responsibilities set forth in this section.

b. The investigative panel shall be composed of:

1. Four judges,
2. Two members of the bar of Florida, and
3. Three non-lawyers.

c. The hearing panel shall be composed of:

1. Two judges,
2. Two members of the bar of Florida, and
3. Two non-lawyers.

d. Membership on the panels may rotate in a manner determined by the rules of the commission provided that no member shall vote as a member of the investigative and hearing panel on the same proceeding.

e. The commission shall hire separate staff for each panel.

f. The members of the commission shall serve for staggered terms of six years.

g. The terms of office of the present members of the judicial qualifications commission shall expire upon the effective date of the amendments to this section approved by the legislature during the regular session of the legislature in 1996 and new members shall be appointed to serve the following staggered terms:

1. Group I. – The terms of five members, composed of two electors as set forth in s. 12(a)(1)c. of Article V, one member of the bar of Florida as set forth in s. 12(a)(1)b. of Article V, one judge from the district courts of appeal and one circuit judge as set forth in s. 12(a)(1)a. of Article V, shall expire on December 31, 1998.

2. Group II. – The terms of five members, composed of one elector as set forth in s. 12(a)(1)c. of Article V, two members of the bar of Florida as set forth in s. 12 (a)(1)b. of Article V, one circuit judge and one county judge as set forth in s. 12 (a)(1)a. of Article V shall expire on December 31, 2000.

3. Group III. – The terms of five members, composed of two electors as set forth in s. 12(a)(1)c. of Article V, one member of the bar of Florida as set forth in s. 12(a)(1)b., one judge from the district courts of appeal and one county judge as set forth in s. 12(a)(1)a. of Article v, shall expire on December 31, 2002.

h. An appointment to fill a vacancy of the commission shall be for the remainder of the term.

i. Selection of members by district courts of appeal judges, circuit judges, and county court judges, shall be by no less than a majority of the members voting at the respective courts' conferences. Selection of members by the board of governors of the bar of Florida shall be by no less than a majority of the board.

j. The commission shall be entitled to recover the costs of investigation and prosecution, in addition to any penalty levied by the supreme court.

k. The compensation of members and referees shall be the travel expenses or transportation and per diem allowance as provided by general law.

History. – S.J.R. 52-D, 1971; adopted 1972; Am. H.J.R. 3911, 1974; adopted 1974; Am. H.J.R. 1709, 1975; adopted 1976; Am. C.S. for S.J.R. 978, 1996; adopted 1996; Am.

proposed by Constitution Revision Commission, Revision No. 7, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

APPENDIX 12

JUDICIAL QUALIFICATIONS COMMISSION RULES OF PROCEDURE.

[April 30, 1998]

Rules 6(g); 23, 25(a)

RULE 6. INVESTIGATIVE PANEL RULES

(g) The notice shall be issued in the name of the Commission and specify in ordinary and concise language the charges against the judge and allege the essential facts upon which such charges are based, and shall advise the judge of the judge's right to file a written answer to the charges within 20 days after service of the notice upon the judge.

RULE 23. CONFIDENTIALITY OF PROCEEDINGS

(a) Until formal charges against a judge are filed by the Investigative Panel of the Commission with the Clerk of the Supreme Court, all proceedings by or before the Commission shall be confidential. Upon a finding of probable cause and the filing by the Investigative Panel of the Commission with the Clerk of such formal charges against a judge, such charges and all further proceedings before the Hearing Panel shall be public.

(b) All notices, papers and pleadings mailed to a judge prior to formal charges being instituted shall be enclosed in a cover marked "confidential."

(c) Every witness in every proceeding under these Rules shall be sworn to tell the truth and not to disclose the existence of the proceeding, the subject matter

thereof, or the identity of the judge until the proceeding is no longer confidential under these Rules. Violation of this oath shall be an act of contempt of the Commission.

(d) Violation of this Rules by a member of the Commission shall subject that member, after written notice and hearing, to removal from office by an affirmative vote of eight members of the Commission and shall constitute contempt of the Commission which may be enforced by appropriate proceedings in the Supreme Court of Florida. (See Rule 26.)

RULE 25. DISQUALIFICATION

(a) Whenever a judge against whom formal proceedings have been instituted, shall file with the Hearing Panel an affidavit that the judge fears the judge will not receive a fair hearing before the Hearing Panel on the charges because of the prejudice of one or more members of the Hearing Panel against the judge, and the facts stated as the basis for making the affidavit shall be supported in substance by affidavit of at least two reputable citizens of the State of Florida not kin to the judge or the judge's attorney, or if any member of the Hearing Panel shall voluntarily recuse himself, such member or members of the Hearing Panel shall proceed no further therein and shall be disqualified from hearing the charges. The affidavit shall state the facts and the reasons for the belief that any such prejudice exists, shall specify the member(s) of the Hearing Panel allegedly prejudiced and shall be filed not more than 15 days after service of the Notice of Formal Charges upon the judge charged.

(2)

Supreme Court, U.S.
FILED
AUG 21 2000
CLERK

No. 99-2055

IN THE

Supreme Court of the United States

STEVEN P. SHEA,

Petitioner,

v.

STATE OF FLORIDA
JUDICIAL QUALIFICATIONS COMMISSION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE FLORIDA SUPREME COURT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the United States Supreme Court has jurisdiction pursuant to 28 U.S.C. § 1257 to review a decision rendered by the Supreme Court of Florida which removed a state court judge from office for 17 violations of the Canons of the Florida Code of Judicial Conduct where the "federal questions" raised in the petition for a writ of certiorari were not adequately presented to or passed upon by the state court and its decision is otherwise firmly based upon independent state grounds?

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OPINIONS BELOW

The opinion of the Florida Supreme Court removing Steven P. Shea from his position as a circuit court judge is reported at *In Re Shea*, 759 So. 2d 631, 2000 WL 300276 (Fla. 2000).

STATEMENT OF JURISDICTION

This Court is without jurisdiction pursuant to 28 U.S.C. § 1257 because the so-called "federal questions" presented by the Petition for Writ of Certiorari were not adequately presented to or passed upon by the Florida Supreme Court and, in any event, the removal of Steven P. Shea from judicial office for 17 separate violations of the Florida Code of Judicial Conduct rests firmly on independent state grounds.

REGULATIONS INVOLVED

The regulations involved are Canons 1, 2, 3, and 5 of the Florida Code of Judicial Conduct. The headings of the pertinent Canons are reproduced below:

Canon 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.

Canon 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities.

Canon 3. A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

Canon 5. A Judge Shall regulate Extrajudicial Activities to Minimize the Risk of Conflict with Judicial Duties.

STATEMENT OF THE CASE

This case involves the removal of a Florida state court judge from office for 17 violations of the State Code of Judicial Conduct. Steven P. Shea took office as a circuit court judge for the 16th Judicial Circuit in Monroe County, Florida in January of 1995. On April 30, 1998, a little over three years into the judge's term, the Judicial Qualifications Commission ("JQC"), filed a Notice of Formal Charges in the Supreme Court of Florida

The Florida JQC was created by the Florida Constitution, article V, § 12, in 1966. Its function is to investigate and recommend to the Florida Supreme Court the removal from office of any judge whose conduct demonstrates a present unfitness to hold office or to recommend a reprimand.

As amended in 1996, the JQC was divided into two separate panels: (1) an investigative panel which receives, investigates and determines whether and when to initiate formal charges; and (2) a hearing panel, which receives and hears formal charges upon referral from the investigative committee. Fla. Const. Art. V, § 12(b) (1996 rev.). The Florida Supreme Court may then accept, reject, or modify the findings, conclusions and recommendations of the Commission, which may now include other forms of recommended discipline. Fla. Const. Art. V, § 12(c)(1) (1996 rev.).

Shea was initially charged with 33 violations of the Code, subsequently increased to 37. The case was tried to the hearing panel of the JQC during two non-consecutive weeks during November and December, 1998. After a full hearing, the JQC made factual findings and recommended to the Florida Supreme Court that Shea be removed from office. (Pet. App. 2, pp. 19-86). The JQC found Shea guilty of 17 specific charges of judicial misconduct, based on clear and convincing evidence, as well as a pattern of misconduct in "prefatory charges." The Supreme Court of Florida affirmed the JQC's findings and recommendations, in its entirety, removed Steven P. Shea as circuit judge, and directed that Shea pay the costs of the proceedings.

In its opinion removing Shea from the bench, the Florida Supreme Court detailed the behavior which it found to be "unbecoming a member of the judiciary . . . which, when considered together, emerge as a pattern of hostile conduct . . ." 759 So. 2d at 637. This conduct was grouped in several prefatory charges asserting that Shea abused the power of his judicial office by engaging in a pattern of vindictive and retaliatory conduct towards those who disagreed with him, including publicly holding the disagreeing party up to scorn and ridicule; launching unilateral investigations of the party's conduct and character; issuing self-serving orders that distorted the facts; airing petty grievances publicly in order to embarrass the parties; being verbally abusive to others and showing disrespect for fellow judges and encouraging others to do the same.

The general allegations were defined by multiple specific instances of misconduct. The JQC found that 17 specific charges[1] were proven by clear and convincing evidence, which are summarized as follows:

> (1) Judge Shea improperly contacted two attorneys and intimidated these attorneys into withdrawing from representation of their client by threatening to recuse himself from all of their cases;
>
> (2) Judge Shea entered an order directing a litigant to show cause why she should not be held in indirect criminal contempt for writing a letter to the Governor complaining of Judge Shea's handling of her support case;[2]
>
> (3) Judge Shea improperly sought to hold a counselor of Upper Keys Guidance Clinic in contempt and threatened to put the Clinic out of business;
>
> (4) Judge Shea limited the rights of pro se petitioners with domestic violence complaints by requiring employees of the Domestic Abuse Shelter to submit affidavits that stated that they

---

1. There were originally 18 individual charges. However, both the JQC and the Florida Supreme Court combined 2 separate charges into single charge (9).

2. This charge alone negates Shea's claim that "[n]o charge emanated from the public. All charges were levied by the JQC on behalf of a small interconnected courthouse group, and Mr. Reed." (Pet. p. 10, n.8).

did not furnish any assistance to the petitioners, chilling the willingness of victims and staff to come forward with legitimate claims. Judge Shea falsely stated in a letter to a newspaper that the staff of the shelter agreed to the use of these forms;

(5) Judge Shea engaged in a pattern of antagonism with court staff and other judges;

(6) Judge Shea independently investigated a bailiff by interviewing a witness concerning the bailiff without notice to the bailiff and without counsel on his behalf, intending to release the information to a newspaper;

(7) Judge Shea slammed a door in a bailiff's face;

(8) Judge Shea inappropriately criticized a bailiff;

(9) In a capital case, Judge Shea entered an order improperly implying that two attorneys were guilty of unethical conduct without allowing an opportunity to respond and threatening that he would refer any failure of counsel to comply with his directives to the Chief Justice of this Court;

(10) Judge Shea denied a proper motion for recusal and then entered an order improperly and inaccurately criticizing defense counsel without affording them an opportunity to respond;

(11) Judge Shea improperly suggested that attorneys in a domestic violence case were encouraging their client to disobey his orders by filing motions for a stay and improperly found the client to be in contempt;

(12) Judge Shea falsely accused an assistant state attorney of attempting to make ex parte contacts with him and threatened to report him to The Florida Bar;

(13) Judge Shea falsely accused an assistant state attorney of having stated that Judge Shea had engaged in ex parte communications;

(14) Judge Shea improperly sought to involve third parties in an internal dispute concerning court administrative matters by publicly disseminating his version of events;

(15) Judge Shea verbally attacked fellow judges in a regular meeting of the judges;

(16) Judge Shea violated the confidence of another judge by disclosing the contents of a confidential memorandum; and

(17) Judge Shea threatened to assess attorney fees against the Clerk of the Circuit Court.

In re Shea, 759 So. 2d at 632, 633.

The Florida Supreme Court denied Shea's motion for rehearing on May 25, 2000. Thereafter, Shea filed his Petition for Writ of Certiorari with this Court on June 22, 2000. Shea applied for a stay of the mandate, which Justice Kennedy denied on June 26, 2000. Shea's second application for stay was denied, after referral by Justice Thomas to the Court, on July 19, 2000.

SUMMARY OF THE ARGUMENT

This Court should deny Shea's Petition for Writ of Certiorari because it is without jurisdiction pursuant to 28 U.S.C. § 1257. The so-called "federal questions" presented in Shea's Petition were not sufficiently presented to or passed upon by the Florida Supreme Court. Further, the removal of Steven P. Shea from judicial office for 17 separate violations of the judicial canons rests firmly on independent state grounds.

The opinion issued by the Florida Supreme Court in this matter is silent as to any federal question or issue. Shea, therefore, has the burden of demonstrating that the highest state court had a fair opportunity to address them. Shea does not, and cannot, point to anything in the record below to support this court's certiorari jurisdiction, and clearly fails to meet his burden. Nor were any "federal questions" or constitutional issues presented to the Florida Supreme Court in Shea's Initial Brief, Reply Brief, or Motion for Rehearing. Any references to violations of "First and Fourteenth Amendment Rights" in the proceedings below were asserted pre-trial *only*, were cursory at best, and most assuredly were not the subject of any order, ruling or opinion in this case, including the opinion rendered by the Florida Supreme Court.

As to the merits, Petitioner throws everything conceivable into this last-ditch effort to save his judgeship. Respondent addresses several of the issues raised in Shea's Petition only to correct the many inaccuracies contained therein. Suffice it to say that enormous time, effort and expense has been expended in removing Mr. Shea from judicial office, and that Florida has gone to great pains to ensure that this lengthy process was fair to all. Mr. Shea has been afforded all process that was due him and then some. Denial of this Petition for Writ of Certiorari is a fitting end.

ARGUMENT

A. REASONS TO DENY THE PETITION.

This Court is without jurisdiction pursuant to 28 U.S.C. § 1257 because the so-called "federal questions" presented by the Petition for Writ of Certiorari were not sufficiently presented to or passed upon by the Florida Supreme Court and, in any event, the removal of Steven P. Shea from judicial office for 17 separate violations of the judicial canons rests on adequate and independent state grounds.

Petitioner claims that "federally protected principles of free speech, procedural and substantive due process, as well as constitutional protections of the independence of the judiciary" have been violated. (Pet. p. 7). Accordingly, Shea invites this Court to engage in "de novo review" of these "federal issues." This completely ignores the confines of this Court's certiorari jurisdiction to review decisions emanating from the state courts.[3]

---

3. For example, in support of his "Reasons to Grant the Petition" Shea refers to a newspaper article of June 10, 2000 (Pet. 9) from the St. Petersburg Times which was written well after the Florida Supreme Court opinion of March 23, 2000. Moreover, it describes an entirely different JQC case against another judge. (Pet. App. 139). This document was obviously not considered below and thus, should be stricken from the appendix.

The Supreme Court of the United States's jurisdiction over decisions from state courts derives from 28 U.S.C. § 1257, which provides:

> **§ 1257. State courts, certiorari**
>
> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity specially set up or claimed under the constitution or the treaties or statutes of, or any commission held or authority exercised under the United States.

With "very rare exceptions," in reviewing state court judgments under § 1257, this Court has adhered to the rule that it will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision to be reviewed. *Yee v. City of Escondido, Cal.*, 503 U.S. 519, 533 (1992); *Heath v. Alabama*, 474 U.S. 82, 87 (1985); *Illinois v. Gates*, 462 U.S. 213, 217-219, *reh. denied*, 463 U.S. 1237 (1983). If both of these requirements do not appear on the record, appellate jurisdiction fails. *Cardinale v. Louisiana*, 394 U.S. 437 (1969).

There are sound purposes underlying this "not pressed or passed upon" rule. First, questions not raised below are

those on which the record is very likely to be inadequate, since the record "was not compiled with those questions in mind." *Id.* It is also important that state courts be given the first opportunity to consider the constitutionality of the actions of state officials. *McGoldrick v. Compaignie Transatlantique*, 309 U.S. 430, 434 (1940).

For example, Shea asserts that the "constitutional structure of the JQC, in regulating and monitoring the Florida Supreme Court, is unconstitutional on its face and as applied in this case, and violates the due process safeguards of the Fourteenth Amendment." (Pet. p. 10). This issue was never presented to the JQC or the Supreme Court of Florida, and is precisely the kind of issue that the state court should have been given an opportunity to address first. Adhering to this rule permits the state court to rest its decision on adequate and independent state grounds. *Cardinale v. Louisiana*, 394 U.S. 437 (1969).

When the highest state court is silent on a federal question, this Court assumes that the issue was *not* properly presented. *Board of Directors of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537, 550 (1987). The aggrieved party bears the burden of defeating the assumption by demonstrating that the state court had a "fair opportunity to address the federal question that is sought to be presented." *Webb v. Webb*, 451 U.S. 493, 501 (1981).

Shea fails to meet this burden. Shea does not, and cannot, point to anything in the record below to support this court's certiorari jurisdiction. Recognizing, *sub silentio*, this failure to present the federal issue to the Florida Supreme Court, Shea seeks to suggest that the thirty seven motions for summary judgment he filed in the proceedings below "set

out factual and legal grounds regarding the violations of Petitioner's First and Fourteenth Amendment rights and the judicial independence issues, as did all subsequent briefs." (Pet. p. 5). This contention is totally without merit. Any references to these issues were pre-trial *only*, were cursory at best, and most assuredly were not the subject of any order, ruling or opinion in this case, including the opinion rendered by the Florida Supreme Court.

Distilled to its essence, Shea's Petition raises no "federal questions" but merely reiterates Petitioner's complaints of "vindictiveness" on the part of the JQC and the "unduly harsh" sanction of removal. What the *evidence* showed, as reflected by the Florida Supreme Courts' opinion is that:

> *Judge Shea engaged in a pattern of conduct in which he acted with hostility towards attorney's, court personnel, and fellow judges.* The totality of the proof in the record supports the conclusion that Judge Shea's conduct in too many instances was not to the standard required of a member of the judiciary. *Judge Shea's lack of respect and temperament in dealing with others with whom he had contact while he served as a judge seriously undermined public trust in the judicial office.*

In re Shea, 759 So. 2d 631, 637 (Fla. 2000) (citations omitted) (emphasis added).

Shea's removal was firmly based on adequate and independent state grounds, and it is therefore, unnecessary for this Court to look beyond the first charge. The Justices of the Supreme Court of Florida found particularly

compelling the evidence regarding Charge 1, stating it was "*such a substantial offense that it alone is sufficient to warrant Judge Shea's removal from the bench.*" *In re Shea*, at 633 (emphasis added).

The Supreme Court of Florida agreed with the JQC that Judge Shea's conduct in negotiating with lawyers appearing before him for his own pecuniary gain, in and of itself, constituted sufficient basis for his removal from office. It concluded that Shea violated Canon 1 ("[a] judge shall uphold the integrity and independence of the judiciary") and Canon 2 ("[a] judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities"), and explained further that:

> Our decision is not to be read to indicate that Judge Shea's recusal from a case in which these attorneys were involved would have been improper. *What was plainly a violation of the Code was Judge Shea's bargaining in respect to a recusal decision.* Judge Shea made it clear to the attorneys that they could either withdraw from representing their clients or have their clients purchase the trailers to avoid his recusal. *Such bargaining was an improper use of his judicial office to gain a personal financial benefit and was a breach of the integrity of the judiciary. We agree with the hearing panel that such a breach of judicial integrity can in no way be tolerated.*

Id. at 637-38. (Emphasis added).

Dishonest use of office to obtain a personal pecuniary advantage has *always* warranted removal from office.

It likewise warranted Shea's removal here. "A judgeship is a position of trust, not a fiefdom." *In re Graham*, 620 So. 2d 1273, 1277 (Fla. 1993), *cert. denied*, 510 U.S. 1163, 114 S. Ct. 1186, 127 L. Ed. 2d 537 (1994). A judge's authority "should never be autocratic or abusive." *In re Turner*, 421 So. 2d 1077, 1081 (Fla. 1982). It is critical that a judge never seek to use his power "in a fit of anger, in an arbitrary manner, or for the judge's own sense of justice." *In re Perry*, 641 So. 2d 366, 369 (Fla. 1994). The record overwhelmingly demonstrates that Shea repeatedly resorted to threats and the use of power in anger, arbitrarily and in fits of pique, and that his conduct had a serious impact on others.

In conclusion, this Court lacks jurisdiction to entertain Shea's Petition for Writ of Certiorari, and this is not a close call. Shea's so-called "federal questions" were not adequately presented below and most certainly were not passed on by the Florida Supreme Court, which, in any event, based its decision removing Shea from judicial office on adequate and independent state grounds. As to the merits, Respondent writes further *only* to correct the many inaccuracies contained in Shea's Petition. Rule 15.2, Rules of the Supreme Court of the United States.

B. SHEA RECEIVED MORE PROCESS THAN WAS DUE.

Shea claims he was denied due process. Procedural due process in JQC proceedings requires that Shea be afforded notice and an opportunity to be heard. *In re Kelly*, 238 So. 2d 565, 571 (Fla. 1970), *cert. denied sub nom, Kelly v. Florida Judicial Qualifications Commission*, 401 U.S. 962, 91 S. Ct. 970, 28 L. Ed. 2d 246 (1971). The record does not support Shea's claim, and it should, therefore, be rejected.

Shea and his counsel had six months to prepare for trial. Prior to trial, Shea filed 37 separate unfounded motions for summary judgment directed to each and every charge, irrespective of material factual conflicts. Each motion required a response by Special Counsel and each was ultimately denied pretrial.

Special Counsel called 24 witnesses and concluded their entire case in three and a half days. Special Counsel shortened the case by dropping twelve of the charges. *The defense called 53 witnesses.* It presented its case for one and a half days in November, and four days during December 14, 1998 through December 18, 1999. *The trial transcript is 2,982 pages long. The record further includes multiple exhibits, including depositions.*

Shea was actually given wide latitude in presenting his defense, as reflected by the following comment by the Chairman of the JQC panel stating early on that "[I]'m not going to rein you in. . . . I'm not going to make any effort to direct it or slow it down. This is Judge Shea's career, and I'm going to let you all do whatever you think you want to do. . . ." (Proceedings 12/14/98, T. 16).

Both parties filed extensive post-trial memoranda (T. 2979). Judge Shea was granted an extension of time to submit his memorandum, and to designate deposition objections to depositions already in evidence. (T. 2980). His memorandum was submitted on January 11, 1999. (D.E. 388). He filed no deposition objections.

Shea also complains about "unspecified, ambiguous 'prefatory' charges filed in contravention of [JQC Rule 6(g)]." (Pet. p. 14). Commission Rule 6(g) states that the

Investigative Panel's notice of formal charges "shall . . . specify in ordinary and concise language the charges against the judge and allege the essential facts upon which such charges are based. . . ." The Amended Notice of Formal Charges ("Notice of Formal Charges") involved here fully complies with this rule.

The second paragraph of the Notice of Formal Charges states that Judge Shea is charged with "repeatedly abus[ing] the power of [his] judicial office by engaging in a pattern of vindictive and retaliatory conduct towards anyone who disagree[d] with [him] on any subject." (Notice of Charges at 1). Paragraph two then lists six sub-paragraphs describing the various types of vindictive and retaliatory actions in which Judge Shea had engaged. (Notice of Charges at 1-2). The third paragraph of the Notice identifies the various categories of individuals who have been the subject of Judge Shea's abuse. (Notice of Charges at 2). It is these two paragraphs of the Notice of Charges which have come to be referred to in these proceedings as the "prefatory charges."

Shea overlooks, however, the 37 separately numbered paragraphs which follow the "prefatory charges". These 37 paragraphs specifically set forth the essential facts upon which the preceding "prefatory charges" are based. (Notice of Charges at 2-13). Moreover, the Notice of Charges identifies paragraphs 1-37 as specific examples of the pattern of vindictive and retaliatory conduct in which he engaged. (Notice of Charges at 2).

The JQC did not violate Commission Rule 6(g) nor did it violate fundamental notions of due process. *See Jent v. State*, 408 So. 2d 1024, 1030 (Fla. 1981), *cert. denied*, 457 U.S. 1111, 102 S. Ct. 2916, 73 L. Ed. 2d 1322 (1982)

("An indictment must fulfill two requirements: the defendant must be apprised of the charges sufficiently to enable preparation of a defense, and the allegations must be specific enough to protect the defendant against being placed in jeopardy twice for the same offense."); *State v. Mena*, 471 So. 2d 1297, 1301 (Fla. 3d DCA 1985) ("[A]ll that is required of the information is that it sufficiently apprise the defendant of the charges against him so that he may adequately prepare his defense and not be unfairly surprised by the evidence he is called upon to meet."). Shea received notice of the charges, a full and fair hearing, and an ample opportunity to defend. *See In re Graziano*, 696 So. 2d 744, 750 (Fla. 1997); *In re Shenberg*, 632 So. 2d 42 (Fla. 1992).

C. THE RECUSAL OF JUDGE KANEY WAS NOT WARRANTED.

The Petitioner claims that the proceedings were tainted by the failure of Judge Frank N. Kaney, Chair of the JQC, to recuse himself. The allegations were summarily denied by the Florida Supreme Court, finding them "insufficient" to meet the threshold for recusal. *In re Shea*, 759 So. 2d 638. A motion for recusal must allege facts which would place a reasonably prudent person in fear of not receiving a fair trial. *Correll v. State*, 698 So. 2d 522 (Fla. 1997).

This issue obviously does not involve a "federal question." Respondent offers the following to correct the distortions of the record that Shea persists in presenting.

Shea's first motion to recuse hearing panel chairman Hon. Frank Kaney was filed May 11, 1998. It contained insufficient facts, and rampant speculation that "Judge Kaney may have had conversations with Judge Miller or Judge

Ptomey or someone else from Monroe County regarding complaints against Respondent. . . ." (D.E. 30, 31).

The motion stated the following "facts":

> 4. Circuit Judge Kaney has served and is currently serving as Dean of the Florida Judicial College. County Judge Wayne Miller is currently serving as Associate Dean of the Florida Judicial College. (See Program Sheet marked Exhibit A.)
>
> 5. County Judge Reagan Ptomey has served on or is currently a member of the faculty of the Florida Judicial College.
>
> 6. During a conversation between Judge Kaney and Respondent, at the 1997 Circuit Judge Conference, Judge Kaney made a comment to Respondent about "blasting" attorneys. Based on the comment, *Respondent believes that Judge Kaney may have had conversations with Judge Miller or Judge Ptomey or someone else from Monroe County* regarding complaints against Respondent. . . .

D.E. 30 (emphasis added).

Shea's motion conspicuously declined to describe the contents of the conversation he ascribed to Judge Kaney, and contained no evidence of *ex parte* communications, but his rank speculation that such must have occurred. The supporting affidavits were equally deficient.

On October 23, 1997, Shea filed a "Renewed Request for Hearing Panel Review of Order on Motion for *Disqualification based on newly discovered evidence.*" Contrary to suggestion (Pet. p. 12), this renewed request was not "ignored." The motion was denied because it *too was entirely unsupported*, and contained no "newly discovered evidence."[4]

In his Petition to this Court, Shea makes another unfounded allegation against Judge Kaney accusing him of impropriety by "dining with a prosecution witness during the course of the JQC hearing in Key West." (Pet. p. 12, n.13). The *facts* are these. On December 14, 1998, during the second session, Chairman Kaney alerted the parties to a problem that had just arisen at the Judicial college, where he was the Dean and Judge Miller an associate Dean. The problem, *as disclosed*, was that Judge Kathleen Kearney was in charge of two phases of the new judges program — mentorship and video — and the new judges college was set to convene on January 4th, 1999 — merely two weeks hence. However, the Governor had just appointed Judge Kearney to be his Secretary of the Department of Children and Families.

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4. Shea makes another equally unfounded accusation against Justices Harding and Wells of the Florida Supreme Court. (Pet. p. 11). Shea asserts the Justices should have disqualified themselves from hearing his appeal because the "Justices *may be under investigation by the . . . JQC.*" (App. 6) (Emphasis added). The sole basis of the motion for disqualification was a newspaper article in the St. Petersburg Times dated March 18, 2000, which alleged that the Justices assisted in shaping the Death Penalty Reform Act passed by the Florida Legislature in January of 2000. The Florida Supreme Court summarily denied Shea's motion, which did nothing more than evidence his willingness to hurl unfounded charges at all who ruled against him.

In full compliance with the Code of Judicial Conduct, Chairman Kaney called the parties together and fully disclosed that he and Judge Miller needed to discuss what they were going to do to replace Judge Kearney. (12/14/98 transcript; pages 17-18, Supp. Appendix to Petitioner's answer brief). The Chairman emphasized that he and Judge Miller "from the . . . beginning" had never talked about this case and they "would continue with that." (*Id.* at p. 17). At that point, attorney Wattigny, one of Shea's trial lawyers, explored the issue further with Judge Kaney:

> Mr. Wattigny: Are you talking about discussions you need to have with Judge Miller this week?
>
> The Chairman [Judge Kaney]: Yes, I'm looking at January 3rd as the new judges college with somebody down — I'm already one person short. Plus, now I have a leadership problem. That mentorship program I can probably handle by March, although I don't want to go that long. But the video experience thing, we're talking about Sunday afternoon, January the 3rd, I've got to have somebody there that can run that program because that's a big faculty that comes in.

Id. at p. 18.

Here there was full disclosure on the record to both parties prior to any discussion commencing between the Chairman and the witness. Shea simply took no action and made no objection. In fact, he later testified at trial that he believed the panel to be "very fair and impartial." (T. 2913). Shea's failure to object should put an end to this matter — and precludes his complaining *again* here.

D. THE ALLEGATIONS OF PROSECUTORIAL MISCONDUCT ARE WITHOUT MERIT.

Predictably, Petitioner also claims prosecutorial misconduct "in not only publicly pursuing uncharged matters, but also in distorting, fabricating, and instigating false and defamatory charges against Petitioner — all charges eventually dismissed." (Pet. p. 14). Shea flat out admits that this issue was not addressed by the Florida Supreme Court. (Pet. p. 15). The JQC responds briefly only to correct Shea's assertion that JQC trial counsel admitted to "fabricating the charge", quoting counsel as stating ". . . the mistake in the drafting of the (gun brandishing) charges was a mistake that I made." (Pet. p. 15).

First, a "mistake" is not a "fabrication." Second, the quote is taken out of context. Special Counsel's comment arose during the questioning of witness Melody Wilkinson, a former baliff in Shea's courtroom. The following colloquy took place:

> Ms. Ross: . . . Just so we're clear, Ms. Wilkinson, you did not at any time indicate that Judge Shea had actually brandished a loaded firearm. Correct?
>
> A. No, he did not.
>
> Q. You indicated that *he threatened to draw a firearm. Correct?*
>
> A. That's correct.

Q. *And the mistake in the drafting of the charges was a mistake that I made*?

A. Correct.

Q. It was anything that you had done?

A. No, it was not. And I was upset about that.

Q. You were upset about it. It got reported in the press. And you had never said that Judge Shea brandished a weapon. *You indicated that he had threatened to brandish a weapon*?

A. That's correct.

T. 870-71 (emphasis added).

The charge was amended to more accurately reflect that Shea had "threatened" to brandish a weapon. Counsel was simply relieving the witness of responsibility for any "mistake" in the drafting of the charge, and accepting it herself. In any event, the hearing panel acquitted Shea of this charge.

E. THE FLORIDA SUPREME COURT REVIEWED THE RECORD.

Respondent also takes exception to Shea's charge that the Florida Supreme Court did not independently review the record. Shea bases this unfounded accusation on the fact that "[t]he FSC found it unnecessary to specify any details as regards 17 charges, despite their constitutional obligation to

independently review the record." (Pet. p. 8 n.6). Here is what the Florida Supreme Court actually said:

> We do not believe it to be necessary to set out in detail *the hearing panel's exhaustive findings of fact [68 pages] concerning Judge Shea's conduct in respect to the specified charges.*

759 So. 2d at 637 (emphasis added).

This statement can only be read to mean that the Florida Supreme Court reviewed the record in its entirety and did so following an exhaustive 68-page report from the JQC hearing panel.

F. SHEA'S HOSTILE TREATMENT OF HIS FELLOW JUDGES.

Shea claims his First Amendment rights were violated when the Florida Supreme Court found misconduct based upon private internal conversations with his judicial colleagues. Notwithstanding his failure to make a First Amendment claim in the Florida Supreme Court, Shea makes the bold statement that: "[d]iscussions between judges in private cannot constitute Code violations, irrespective of the subject matter, the nature of the comments, the personal convictions which prompted the comments, the decibel level of the comments, or the colorfulness of the rhetoric." (Pet. p. 21). Respondent strongly disagrees. Here are just two examples of Shea's objectionable treatment of his colleagues, which clearly crosses the line of permissible conduct expected of judicial officers.

In late October or November 1997, Judge Shea launched an attack on Judge Wayne Miller over a ruling Judge Miller had made releasing a defendant on bond over Judge Shea's suggestion on the arrest warrant of a no-bond-allowed. (T. 937-48). After Judge Miller apologized to Judge Shea for not contacting him before changing the bond, he responded by telling Judge Miller that "[you have been] condescending to me ever since judicial college, you and your little snide remarks." (T. 945). Judge Miller was "really taken aback by the viciousness in his tone" and his "vindictiveness." (T. 945). Judge Miller testified that Judge Shea's demeanor during this five minute telephone conversation was "like letting an animal out of a cage." (T. 947-48). Judge Miller was "shocked and really dismayed by the attitude that [Shea] showed and the aggressiveness of his tone." (T. 948).

Another event exemplifies Judge Shea's hostility towards, and lack of cooperation with, his judicial colleagues. Judge Shea publicly disseminated a memo he authored which critically attacked a decision his fellow judges made to eliminate Official Court Reporters in all civil cases. At the next regularly scheduled judges's meeting, some of the judges expressed their concern to Judge Shea that he had chosen to take his grievance regarding the court reporter issue *public* by disseminating his memorandum directly to the Upper Keys Bar Association, without first affording them the opportunity to know his position and the contents of his memo, or affording them the opportunity for consideration of all views and discussion among themselves. (T. 1005-08; T. 1048; T. 1109-1110).

At this point, Judge Shea became agitated, made abusive and derogatory remarks to his colleagues, and told them that

he had talked to lawyers and judges around the state about all of them and that the lawyers and judges had absolutely no respect for any of them. (T. 1005-008; T. 1109-1110). Judge Shea then told his colleagues that "he didn't care how or what [they] thought about what he did, *he was going to continue to do exactly what he wanted to do*" and that "*he was going to go public with whatever he wanted to go public [with] because that seemed to get things done.*" (T. 1008; T. 1109-1110, emphasis added). Discussion ceased when Judge Shea stormed out of the room. (T. 1008). These parting words by Shea to his fellow judges evidence his intention to continue employing whatever methods he chose to accomplish his goals, no matter what effect his methods might have on others.

The remaining issues warrant no further discussion. Suffice it to say that, enormous time, effort, and expense has gone into the prosecution of this matter. The State of Florida has gone to great pains to ensure that this lengthy process was fair to all. The Florida Supreme Court was completely justified in removing from office this dishonest, autocratic, and abusive judge, whose conduct so clearly crossed the line of acceptable judicial behavior. It is respectfully submitted that this matter should now be brought to an end.

CONCLUSION

For all the foregoing reasons, Respondents respectfully request that this Honorable Court deny the Petition.

Respectfully submitted,

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